Solberg

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO
COMPANY, et al.,

Defendants.
_____/

Miami-Dade County Courthouse
Miami, Florida
1:50 p.m.
Tuesday, January 12, 1999

TRIAL - VOLUME 173

The above-styled cause came on for trial before the Honorable Robert Paul Kaye, Circuit Judge, pursuant to notice.

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On behalf of Plaintiffs

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(Whereupon, the following proceedings were had:)

THE COURT: All right. I guess we're ready to go.

MR. ROSENBLATT: Without the jury initially, Judge, I've got a packet of documents which I gave to Mr. Heim, and all of these documents have been listed. I'm nearly certain that all of them were discussed during Mr. Solberg's deposition. And I don't see any need to publish -- I'm not asking to publish them now. I'm not really even asking to go through them with the witness at this point. But for record purposes, I don't know what you're objecting to or -- you know.

MR. HEIM: What I would like to do with them, Your Honor, in view of that comment, since I know counsel wants to have them admitted, is to give us a chance -- I know Mr. Martinez particularly needs a chance to look at one of the documents. There are a few others that we may have objections to. So I don't think it would take long if we just put it off until Friday when we're probably going to do other such things.

THE COURT: All right. If the witness isn't necessary for the documents.

MR. ROSENBLATT: I don't think the witness is really necessary.

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THE COURT: We can do that at another time.
MR. ROSENBLATT: Okay. But at some point by -- at the end of the day, Judge, I would probably want to go through the numbers.
THE COURT: Just to make sure we have the right numbers and the right documents. You have an extra set for the Court?
MR. ROSENBLATT: This is your set.
THE COURT: Is that the clerk's set or my set?
MS. BERGER: Those are the originals?
THE COURT: Just put a yellow sticky there. Say clerk's copy, originals, and put a note on there, hold for ruling on admissibility.
MR. ROSENBLATT: And I've got an index now of the tobacco ads.
THE COURT: Good. We'll need that for the clerk.
MS. LUTHER: Stanley, do you have one for me?
MR. ROSENBLATT: I think so, yes (Handing).
MS. LUTHER: Thank you.
THE COURT: Just put the little sticky on there saying index of tobacco ads. She'll know.
MR. ROSENBLATT: I don't want to overload her. So should I put this on the floor by me

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temporarily?

THE COURT: No, just lay it on the desk.

Counsel has gone through it?

MR. KIRBY: No, Your Honor.

MR. HEIM: No, we just got handed it.

THE COURT: All right. Now are we ready? All right. Let's get the jury out.

THE BAILIFF: Bringing in the jury.

(The jurors entered the courtroom.)

THE COURT: All right. Let's proceed.

CROSS-EXAMINATION

BY MR. HEIM:

Q. Good afternoon, Dr. Solberg, or actually, it's Mr. Solberg. Everybody else has been a doctor, I might as well make you a doctor too.

A. Do I get an honorary degree from you?

Q. You can have one from me, for what that's worth.

MR. ROSENBLATT: For whatever it's worth.

MR. HEIM: That's what I said.

BY MR. HEIM:

Q. But if I do that, don't worry about it, just answer the question.

Let me start there. I believe you testified that you got your undergraduate degree in 1988 in

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exercise physiology. I think that was right. Is that right?

A. That's correct. At Augsburg College.

Q. And that's part of a health and fitness program or some component of health and fitness?

A. That's correct, yes.

Q. And then your Master's degree in 1996 in kinesiology, and you were asked what that was, and I didn't quite get it and I wanted to make sure I understood it and the jury understood it. The response of the body to exercise; is that what you said it was?

A. No. That's actually what exercise physiology is. Kinesiology is the study of the motion of the body.

Q. Okay. So if I -- if I'm a tennis player, which I'm not, but -- or not a very good one. If I'm a tennis player and I'm developing tennis elbow because of some way, is that something that a kinesiologist would be able to judge, based on the way that I serve? I'm trying to get an idea of what one would do.

A. Yes, that's one area of kinesiology would be to analyze your tennis swing, your golf swing. For me it would be my golf swing. But yeah, that's essentially what they can do. They can't necessarily tell you what's hurting you or what's wrong with your

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elbow in a tennis swing, but they can analyze your swing and help you to improve it if you wanted to improve that game or sport.

Q. As a kinesiologist, you wouldn't improve my tennis game in terms of hitting the ball, but you'd improve it in terms of how my body moved, I gather; is that right? Or would you help me be a better tennis player?

A. Well, both. I mean, you would analyze the swing. A kinesiologist would analyze the swing, but would also assume that the racket was part of your lever, the lever of your arm and your wrist and forearm and your upper arm, so they would look at your swing and give you an analysis.

Q. But if I had tennis elbow, you wouldn't give me a medical opinion on my elbow; is that what you meant?

A. That's correct. No.

Q. So I gather the field of kinesiology is not part of medical training.

A. Well, no, that's not true. I actually -- there are several courses in medical schools that address both exercise physiology and kinesiology. Those would be anatomy and human physiology, those two courses. I actually had human physiology, even though

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I wasn't a medical student, at the medical school as part of my Master's degree. So I was a graduate student that sat in a course which was two quarters long in human physiology which was at the medical school at the University of Minnesota.

Q. And the reason for that is if you're trying to help somebody with how their body moved, you have to understand anatomy essentially. But my point, you're not part of a medical degree program?

A. I'm not part of a medical degree program, no. My program is in kinesiology, but components of kinesiology overlap with components in medicine. So I took two courses in the medical school at the University of Minnesota.

Q. And where are the bulk -- what school is the bulk of your courses in?

A. The department?

Q. Yes.

A. It falls under the Department of Education. The division itself is called the division of kinesiology and leisure studies.

Q. And what are leisure studies?

A. That's a good question. That would be everything -- I mean, technically you could put tennis in that category as a leisure activity. It really

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covers every -- I think outside of the exercise physiology domain, it would cover activities such as walking, maybe horseback riding, things that may have a professional sport counterpart to, but average person would call it a leisure activity.

Q. Okay. Well, because it had an "ology" on the end of it, I was trying to distinguish it from other "ologies" that the jury has heard about. Maybe I can do it a different way.

You have nothing to do with toxicology, for example. The jury has heard about toxicologists.

A. No, nothing to do with toxicology.

Q. And your field of academic study has not been epidemiology?

A. That's correct.

Q. And your field of study has not been oncology, the study of cancer?

A. That's correct.

Q. And the same would be true for psychology, pharmacology, molecular biology, all those other "ologies" have not been your academic field of study?

A. Well, sociology would be, and psychology would be. Because sociology of sport is my subdiscipline in the division of kinesiology at the University of Minnesota. As I mentioned earlier, there

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are a number of degree programs that a student can follow in obtaining a graduate degree, for that matter, an undergraduate degree or a graduate degree, be it a Master's or Ph.D. level.

And so the sociology of sport, psychology of sport, motor learning, and that applies to what they call "adaptive physical education" which would be physical education and understanding how persons with handicap, especially mentally retarded persons differ in their motor development than the average human being.

So ---

Q. Students can get a degree in sociology itself, right?

A. Yes, that's correct.

Q. And your degree is not going to be in sociology?

A. Sociology of sport is what it is called.

Q. Is that what your degree will be when you get your Ph.D.? You will be called a sports sociologist?

A. That's correct, yes.

Q. Is that different from a kinesiologist, a sports sociologist?

A. That's very different than a kinesiologist, yes.

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Q. And your Ph.D. will be in sports sociology?
A. Yes.
Q. All right. In your various academic studies, have you taken any courses in advertising?
A. Courses that include advertising or --
Q. Well, have you taken a course in your -- when you were an undergraduate in the field of advertising?
A. Well, the field of advertising would also include courses in psychology. So --
Q. Well, did you have the one that had the word "advertising" in the course book name?
A. You mean in the actual title of the course?
Q. Right.
A. No, I did not.
Q. How about marketing?
A. No, I did not.
Q. And would that be true of your Master's study and your Ph.D. study, you haven't taken courses whose name is advertising or marketing?
A. No. Sports marketing, which is a very specific area of marketing, but that would be it.
Q. Okay. And how about is that true of your Ph.D. studies too, you would have some sports marketing in your sociology of sports?
A. That's correct.

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Q. Okay. Now I want to go to the subject first of these advertisements that you were shown this morning and ask you some questions basically about how you collected them and where you got them from and things of that sort.

So let me ask you this. You used the term archive. Tell the jury what an archive is generally, because that's one of those words that not everybody is familiar with. I'm certainly not. So when you talk about an archive, are you talking about a room or a couple rooms in which you store things?

A. Well, I think first you put it in the context of information sciences, and there are degrees that people get at universities, undergraduate and graduate level degrees in information sciences, and that covers everything from a librarian, a research librarian, an archivist and so on and so forth. So technically you would probably want to put it in that context. And secondly -- do you want me to describe our archive in terms of what it includes?

Q. Sure. Did you take any courses in being an archivist, along with sports sociology?

A. No. We've employed archivists over the years. But I don't have that background.

Q. Why don't you tell us what your archive is,

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you know, when it comes to advertising, so we have a mental picture of an archive?

A. Sure. There's -- at the University of Texas, there's an archive. I'm just going to use this as a quick analogy. There's actually more than one archive there, but there is a collection called the Center for American History, and that includes things like the Walter Cronchite archive. That's all of his film and transcripts of things that he's either said on the air or off the air, whatever it is, and some of his correspondence and things like that.

Many organizations, including DOC, have an archive where the organization itself or the business stores its business, saves its documents and preserves those.

In our case, we have what we call a tobacco archive, and that is that we have tried to preserve any and all information related to the tobacco issue, from all vantage points.

Q. Now, your archive for tobacco ads that you've collected over the years, have you tried to make that archive a systematic collection of tobacco ads?

What I mean by that is take, oh, I don't know, like I have a Saturday Evening Post here that was used with you this morning. Have you tried to get all

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the tobacco ads that appeared in the Saturday Evening Post during, say, 1950?

A. No, we haven't cataloged those in that way. What we've done, as I said this morning, was to sort by brand name first and by year second. In some cases we've made an effort to keep the same title of publication together, but not always because we have different categories that we've put these in.

So, for example, the use of sport themes in cigarette advertising would include publications like Life and Time, it would include some of the publications you just mentioned. It wouldn't be all the same publication in that part of the collection.

Q. Okay. Let me ask you this.

A. And --

Q. Excuse me. I didn't mean to interrupt you.

A. Actually, you just thought of something else.

Q. Go ahead.

A. That's part of the problem in archiving, in library science or information sciences, is to develop classification schemes, which is simply how do you keep this material organized?

And that's been something that we have been struggling with and continually refining and changing in our collection over the last decade or so, actually

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since about 1992.

Q. Now the question that I was about to ask you was this: If you wanted to pick an ad for a particular cigarette -- and I'm going to pick one off the top of my head and hope there was such a cigarette in the '40s -- I'll pick Raleigh. Help me out. Were there Raleigh cigarettes in the '40s?

A. I don't recall.

Q. Let me pick a different one. Chesterfields?

A. That's why we have archives, by the way. So if you don't exactly remember, you can go back and check.

Q. Let's pick Chesterfields. There were Chesterfields in the '40s?

A. Yes.

Q. Would you feel comfortable saying, for example, that you have all the Chesterfield ads during a given year that appeared in print advertising, say all the Chesterfield ads in 1948?

A. No. I don't think there is any collection that would have every single print ad other than something that tobacco companies saved, and perhaps it would be the tobacco company that manufactured that brand.

Q. Now would you know how many of the

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Chesterfield print ads that you didn't have?

A. No, we wouldn't know that answer either.

Q. Okay. Now --

A. I think what we've tried to do -- sorry, just to continue to answer that -- what we've tried to do is collect as many as we possibly can. So several we have some duplicates, and I don't think I could safely say that we have all of them in any given category or brand name.

Q. And your effort to get these ads has been, in effect, to have Dr. Blum or you or others or members of DOC or anyone else that would be helpful to you, just kind of, if they come across them, send them to you, right?

A. No, that -- I mean, that's one way of obtaining them. But there's an entire field called antiquarian tobacciana, which is most concerned with collecting books, rare books, old books, that deal with tobacco, and perhaps the greatest would be the Aarons Collection in the New York City Public Library that has literally everything that's been published going back about 500 years to the beginning of the century, and that's sort of where that one ends.

We've met and worked with a number of people involved in that area of collection, and they've

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pointed us in the direction in terms of where we can obtain these things.

It's not cheap. I mean, there are ads where we've paid well over $100 for a single advertisement.

Q. So you've looked where you can to find these ads, but as you've said, you can't assure anyone that you have a complete set of the ads of any particular brand for any particular time period; would that be fair?

A. Yeah. I stated that earlier. I think that's a fair statement.

Q. Now, in looking back, what we're doing here, it's 1999 already, and you're -- we're looking back to a period let's say the '40s, some 50, 60 years ago.

When you look back at a historical event that took place back then, is the context of the ads something that you try to maintain and preserve?

A. Yes. It has been our practice to try to maintain and preserve the context in which the advertisements appeared. For example, rather than just clipping an advertisement out of a newspaper or out of a magazine, we've tried to save it in the context of that magazine.

Q. And that's because you -- okay.

A. Yes, it's a little close here.

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Q. That's because when you're looking back in time, you want to look at things fairly juxtaposed against what other things were occurring in that time period and the level of knowledge and the level of activity at that time period; isn't that fair?

A. That's a good statement. In fact, you used the words that we used in our own office. In fact, we have this hanging up in part of the archive, an Irish proverb that says, "Thought may be good, but juxtaposition is better."

The reason for that is in many cases you will find front page news about the rising cost of medical care, and on the back page will be a full-page cigarette advertisement which may have much better impact being in that context.

Q. And when you're looking back and making a judgment about what happened in a time period 50, 60 years ago, you would agree that you have to evaluate that against the state of knowledge of those things back in that time period, wouldn't you?

A. Yes, that's correct. And that's part of -- part of maintaining the context of the cigarette advertising, yes.

Q. Now, are you familiar with a concept called "present mindedness"?

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A. Yes, vaguely. I know what it refers to.
Q. And present mindedness is a concept that is essentially that you shouldn't look at -- you shouldn't look at historical events using today's prism; you should look at it through the prism of the time.
Would that be a fair statement of present mindedness?
A. Yeah, I think it has a lot to do with applying today's ethical standards and values on a previous time period or previous era.
Q. And the state of knowledge today to the state of knowledge back then.
A. Certainly.
Q. Now, I want to just look at some of these ads with you, and it's going to be a little awkward. So I want you to bear with me, because these were ads that were shown to you this morning. I mean, these were publications that were shown to you this morning, and I just looked at them over the lunch hour. Since I hadn't ever seen them before, I don't have copies.
So what I'm going to try to do, as I do this, I'll hold them up and show them to the jury, the ads, and kind of show them to you. I just want to ask you a few questions. It's really about context as much as anything else, okay?

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A. Sure.
Q. Okay. Now -- excuse me for a moment.
THE COURT: I thought they came in under a general number. It's either 5426, as composite, or 5488, 92, 95.
MS. LUTHER: 5426 already has letters going into quadruple letters all the way out.
THE COURT: Some did and didn't and some don't have any numbers at all. So I thought they all came in in a composite.
THE CLERK: Individually?
MR. HEIM: I don't know. But why don't we do this, Judge, so we don't waste time. Why don't I refer to them as Composite 5426. Then later, when the jury isn't here, we can straighten it out. Is that okay?
THE COURT: All right.
THE CLERK: Okay.
BY MR. HEIM:
Q. Mr. Solberg, the first one I want to show you, and I'm keeping the stickers on there that were on there, at least I'm trying to, although I've added one or two of my own --
A. That's fine.
Q. -- is the Journal of the American Medical Association. That's this old magazine here for

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everybody to see.

Now this largely was read by doctors, not the general public; would you agree?

A. Yes, that's correct. I don't know too many people in the general public who read medical journals.

Q. Right. I agree with you.

So the people who would be reading something like the Journal of the American Medical Association would have medical training? If they're doctors, they should have already gotten out of medical school or they're reading it while they're in medical school, correct?

A. Most likely, although there's allied health personnel that would pick up that very issue. Schools of nursing subscribe to that as do physiologists might be reading it as well.

Q. Have you looked, have you made a study of medical school curricula -- let's see what date this was -- during the 1950s -- as to what medical schools were teaching on the subject of smoking and health risks?

A. If I made a study of the medical schools from 1953?

Q. From generally, during the 1950s, have you looked at medical school curricula to see what they

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were teaching on the subject of the health risks of smoking?

A. Not historically, no. In the last ten years, we've identified not a single medical school in the entire country that has a course, like you said earlier, a course on advertising or marketing, a course on tobacco and health issues, where tobacco would be the primary subject of study for that course. And that's to this very day.

Q. But you certainly don't mean to suggest by that that there isn't discussion and education in the medical schools of this country on the subject of smoking and health?

A. No. The surveys that have been published by Dr. Michael Fiore in Wisconsin and others suggest that the amount of attention that is paid to the smoking and health issue in medical schools is very small, including maybe one or two lectures, first in pathology classes and also in physiology course.

Q. So my question is, do you know what was being taught in the '50s on that subject, and I gather the answer is you don't?

A. I haven't studied the 1950s, no. I would assume it's very similar to what is being taught today, that a very small portion of some of the courses deal

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with the issue.

Q. You would assume that, but you actually don't know?

A. That's correct.

Q. Okay. Now, this was published how often, the JAMA?

A. That was -- well, it varies from time to time. But I believe at that time it would have been published weekly, or biweekly, excuse me.

Q. No, you were correct the first time. It says published weekly. The sticker was on top of it. Published weekly out of Chicago, Illinois. So roughly, 50, 52 times a year, a doctor or likely a doctor would get one of these, right?

A. That's correct.

Q. Okay. Now, have you looked through this particular one that I -- are these ones that you brought with you?

A. That's one that I brought with me, yes.

Q. Okay. Do you know -- well, you certainly know that there are lots of other advertisers in here, right?

A. Definitely. In fact, advertising in JAMA is the number one source of income to this very day for the American Medical Association. That's about 20

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percent of their revenue.

Q. And I think you said that in 1953, they got about $98,000 annually from tobacco advertising?

A. That's correct.

Q. Now, when I look through here, I can only find one tobacco ad. There may be more, and I didn't have much chance to look. But all I could find was one out of maybe, I don't know, 50 or more ads. Would you agree with that?

A. I would agree there's probably about 50 advertisements in the publication, yeah.

Q. So the amount of money that the -- the amount of ad revenues that were coming from cigarette advertising in 1953, to be put in context, would have to be put in the context of the overall revenues that were coming from all of these other advertisers, right?

A. Certainly that would be one way of looking at it, yes.

Q. Okay. And we don't know how much that is, because you don't know how much money all these other advertisers paid to do ads like these, like this ad for Remington typewriters?

A. Well, we've purchased advertising space in JAMA. And like other publications, they have advertising rates. The more frequently you advertise,

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the lower the rate becomes, and so on and so forth. So a full-page ad for a cigarette brand for Camel is going to be the same as a full-page ad for penicillin, based on the same number of frequency when they purchase the advertising.

Q. No, I think you under misunderstand my question or I didn't ask it very well.

Since there is only one or if there's more than one, two ads for cigarettes, as opposed to all these other ads that are in this journal, and you said you would have to put that in the context of the ad revenues that the AMA was getting from all of its other advertisers, my question was, you don't know how much in dollar amount compared to the 98,000 it was getting from Pet milk and all these other people, Remington typewriters and others, right?

A. Well, if you put it in categories, I think you could break it down between food and drug, tobacco and other. And to answer your question, I don't know what the amounts were of the other advertisers in terms of a category or a specific company. But I think that's only one context, that's to put it in the context of the amounts of money that are being generated by the advertising. The --

Q. But if you're looking at -- you know, to be

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fair, Mr. Solberg, if you're looking at what kind of influence, which is really what you were talking about this morning -- I mean, let's call a spade a spade here. If you're looking at what kind of influence tobacco ads had on the American Medical Association in 1953, you really would want to know whether $98,000 a year was a small part or it was a large part of their overall ad revenue, wouldn't you?

A. Certainly. But I think $100,000 a year is a large part no matter how you cut up the pie. In fact, it's a very large part, even in today's standards, and I'm putting it back in the context of when this $100,000 was being paid. Let's say for the sake of argument you go through every issue of JAMA and there's 50 ad pages as you've done and counted them here and there's only one cigarette ad per issue. Let's say that's the way it is. Then you would have 1/50th of their ad revenue in JAMA would be cigarette advertising.

Q. We can all agree on that, that 1/50th would be 2 percent, and the jury would have to decide whether they thought 2 percent was significant in terms of, quote, having some effect on the American Medical Association, end quote, or whether 2 percent really isn't going to influence anybody to do anything, right?

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A. Well, I think when we talked about influence this morning, we talked about 10 million dollars, not $10,000. So that was in the journal. So I think you're misrepresenting my earlier testimony today.

Q. No, I'm going to come back up to the other 10 million.

A. Make sure you add the other 8 million.

Q. I'm going to come to that subject. If you answer my questions, we'll get along better, okay?

A. All right.

MR. ROSENBLATT: Well, the witness is not here to get along with you. He's here to be responsive to your questions.

THE COURT: Have we gone this far?

MR. HEIM: We're done, Judge. We have to have our one little spat. Then we go on.

THE COURT: All right. Let's proceed.

BY MR. HEIM:

Q. Now, let me ask you about a couple ads that are in here, because of context, okay? All right.

Well, I'd already shown you the Remington office writer ad. Let me turn to something else here.

Okay. Here's an ad for Clapp's baby foods. Can you see that?

A. Yes, I can see it.

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Q. I'm holding it up. I'll hold it up for the jury as well. It has the heading: If I ever become a doctor, I'll specify Clapp's baby foods for all my babies too.

Is that typical of the kind of ads that you would see in a JAMA publication as well?

A. The baby food ad that you're pointing to?

Q. Yeah.

A. Sure. That's a very typical advertisement, yes.

Q. And would you see -- would you see a frequent reference back in the early '50s to doctors in different ads by different companies?

A. Yes. In fact, the companies that used doctors in their ads, the most frequent are pharmaceutical companies, and I think one would probably expect that that would be the case, yes.

Q. Sure. Sure.

Here's an ad for Hart nasal jelly. Do you know what nasal jelly is?

A. I would assume it's a Mentholatum type product that helps you breathe easy when you have a cold. I don't know.

Q. Haven't seen any of those recently, I guess.

Do you still see today in JAMA -- here's one

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just for the record, Pet milk, referring to evaporated milk, guards against rickets.

Do you see any ads like this in JAMA today?

A. Well, similar ads, except they have white mustaches above their upper lip.

Q. Do you see any of them saying they guard against rickets?

A. No, but they say they contain calcium and are good for strong bones.

Q. Do you see a difference between those saying they contain calcium as opposed to guarding against rickets?

A. Well, there is a specific code in the advertising, the ad council at JAMA, that specifically prevents them from talking about certain kinds of diseases.

For example, the American Cancer Society is famous for their orange juice ads that talk about preventing cancer. Now you can do that out in the general media, but you can't do that in JAMA.

Q. Let me ask you about a few of these other -- Olga, I'll give these to you once I finish them -- a few other of these ads in their journals that you were shown today.

Here's the New York State Journal of Medicine

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from November 1st, 1945. Now I think you testified this morning that the Journal of Medicine, these state Journal of Medicines were affiliated with the AMA; is that right?

A. There's about 33 of them that belonged into the group, yes. That's correct. And the New York State journal was one of those.

Q. Published by the Medical Society of the State of New York?

A. That's correct.

Q. Would you agree that the kind of ad that you would probably not see in a medical journal today that appears in this November 1945 journal is this one from the American Meat Institute that talks about the maintenance of the hemoglobin level and promotes meat?

Would you see that in a JAMA ad today? I'm sorry, a JAMA -- in the Journal of the American Medical Association today, a meat ad?

A. That's a good question, actually. You mean today? I mean, there have been those up in the 1990s, there have been meat ads like that, and the dairy one that I gave an example of, the dairy association, that has occurred in the 1990s.

In fact, there's other products like those, like consumer -- general consumer products. And

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Fleischman's margarine, which is owned by RJR, sponsored a project with the AMA in the 1990s and had advertisements in their journal. That's the same people who made Camel cigarettes.

Q. But if an ad was submitted to JAMA today saying such things as: The only source of protein required for maintenance of the hemoglobin level is the protein derived from the foods eaten, and then going on and suggesting that meat is the way to get that, would you see that in JAMA today?

A. Probably not in that detail. Everything today seems to be more image related than it is in text. So I don't think you'd probably find an ad that -- although not necessarily true. I mean, there's -- when the AMA ran its cholesterol campaign where advertisements appeared in both the lay press and in their own medical journal that was sponsored by RJ Reynolds, it discussed in great detail in the text of the advertising exactly what lower cholesterol levels will do for you and how Fleischman's margarine should be part of your diet.

Q. Do you know whether medical advice today tends to weigh against eating a lot of red meat?

A. I guess in reading -- talking about popular press or are you talking about the medical literature?

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Q. No, I'm talking about medical. When I go for your annual physical or you go for yourself, does your doctor ask you questions about how much red meat you eat?

A. My doctor isn't as concerned as --

Q. He's not as concerned as my doctor?

A. Probably. I didn't mean to make it sound that way.

THE COURT: I think we're getting -- let's change.

MR. HEIM: All right.

BY MR. HEIM:

Q. Let me show you an advertisement that refers to doctors' advice for footwear, Pediforme footwear. Do you see those kind of things today, in footwear ads, referring to the medical benefits of shoes?

A. You wouldn't see something like that in today's medical journal. I think, in fact, there was some recent discussion about that very topic.

It's funny you brought up footwear because there's products on the market called "mag steps" and other magnetic devices that you stick inside your shoes. There's been companies that are making health -- certain health claims about those products, and they've been cracked down on for having done so and

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have been very well scrutinized by the medical profession.

Q. Was it commonplace during the course of the '40s to use people who were either doctors or nurses or dressed as doctors and nurses for selling particular products?

A. Yeah, I think that's been a common theme even to this very day. There are a number of products, aside from health care products, that feature, you know, quote "men in white" so to speak, other allied health professionals.

Q. In fact, didn't Coca-Cola back in the '40s or '50s sell its Coca-Cola in medical journals using figures of doctors?

A. I believe that is correct, yes.

Q. And --

A. That would be one way that I would definitely try to reach doctors is putting doctors in my ads, yes.

Q. Now, I want to ask you some questions about the Saturday Evening Post from 1950. Let me just pick one here to -- and I guess the question that I would ask you for this one is where would you classify this kind of an ad? Kind of a delicate subject. It says, Sunsweet prune juice ad, extolling the benefits of regularity. And my question is, if you look at this

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ad, would you put this as a health claim?
A. If I were classifying advertising in general?
Q. Yeah.
A. I guess you could put it in more than one spot or category. I would probably put it in the category of a health claim, yes.
Q. And the reason you would do that is because it says --
A. It discusses the laxative --
Q. Well, it says: C.L. sure makes Sunsweet the best prune juice for regularity; right?
A. It talks about working as a laxative there too in that paragraph. So ---
Q. Okay. How about this one? It's the last one I'll do. It's kind of fun looking through this old magazine. But --
A. I get to do that every day.
Q. How about this one here? This is a General Electric ad for television back in -- let's see --
A. 1950.
Q. Yeah, thanks, May of 1950. And it says: Which picture is best for your eyes?
Would you categorize that as just a general ad or a health claim ad? (Handing)
A. I would categorize that as a health claim in

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an advertisement.

THE COURT: Would or would not?

THE WITNESS: I would. I would.

BY MR. HEIM:

Q. You would because of the, "Which picture is best for your eyes?"

A. Yes. It would suggest that one is not good for your eyes.

Q. All right. Now, just to come back to context and advertising in medical journals, it was 1953, was it not, that Dr. Wynder and Dr. Graham published their article in the Journal of the American Medical Association on smoking and health that got a great deal of publicity?

A. There was one in 1950, I believe, and one in 1953.

Q. Okay.

A. One was in a different -- one was by Wynder himself. I forget at the moment which one comes first. If you have a copy of them, I would know for sure.

Q. Well, either way --

A. Well, Hill and Doll published in 1953 and Wyndham, and Wyndham and Graham, and there was another one, I believe, in 1954. So it was basically between 1950 and 1955 was where the first major studies were

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coming out, right.

Q. Right. And one of those major studies that was pointing to issues with regard to smoking and health was published in JAMA, correct?

A. That's correct.

Q. And it was at the end of 1953, I believe, when you testified, according to your testimony, that JAMA and all of its subsidiary medical journals stopped accepting cigarette advertising, correct?

A. That's correct. That was my testimony.

Q. By the way, there was actually, back in the '40s and early '50s, whiskey manufacturers actually advertised in medical journals, correct?

A. That's correct. And those were done away with in the same policy as the cigarette advertising was.

Q. At the end of 1953, when the journal decided to not -- no longer accept cigarette advertising, they also decided not to accept advertising by alcohol manufacturers, or at least whiskey manufacturers?

A. Actually, it was alcohol companies is the way it was stated, yes.

Q. All right. Now I do want to turn to the subject of the American Medical Association and ask you some questions about it.

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And I think you'll agree with me that when you do go back in time as we were talking about earlier, when you go back 40, 50, 60 years to try to look to see what happened in a particular period, you want to try to be as accurate as you can be, because you weren't there, so you're trying to assemble information to permit you to be accurate, right?

A. Yeah, that's what historians are trying to do. I mean, there are certainly different kinds of history. There's physical evidence that archaeologists brush off and uncover that leads them to certain conclusions. But yes, that's -- they weren't living at that time, but they're trying to be as accurate as they can.

Q. And you're trying to avoid a bias that might come from looking at only one side of an issue? That would be fair to say, wouldn't it?

A. Yes, I would agree with that statement.

Q. For example, just hypothetically, if you wanted to get a fair and accurate picture of how well the United States did in World War II, you wouldn't just look at newspaper accounts of battles that we lost; you would want to look at all the newspaper accounts so that you are able to get a fair sense of what happened during that period, right?

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A. I would agree with that, yes.
Q. Because if you only looked at the battle that we lost, you would think we lost the war --
A. That's right. Oftentimes that's called revisionism by the way.
Q. Revisionist history?
A. That's right. Trying to revise history as it's being written. Although I must say, in the United States, when it comes to presidents, we do a good job of that. Seems like everybody who has ever been president somehow has some sort of terrific history with a few exceptions.
Q. As one said, I know history will be kind to me, because I intend to write it.
A. That's right.
Q. Now, when you went back to get documents to collect so that you could assemble information about the American Medical Association, is it fair to say that most of the documents that you were able to get came from lawyers who had been involved in litigation against tobacco companies?
A. Most of the internal documents that we receive were from, yeah, two different sources that were plaintiffs' lawyers, as you stated, yes.
Q. And these were lawyers who, when you call

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them plaintiffs' lawyers, to be fair, they're lawyers who are representing people, plaintiffs, in cases in which they've sued the tobacco companies.

A. Yeah. At that time, actually, it was in 1983, was the case -- the Cipollone case, Marc Edell, is an attorney who shared them with another attorney who shared them with you, say eventually -- actually, it wasn't shared directly with us, it was given to someone else and turned over to us in 1987.

Q. And you have made some efforts, as I understand it, Mr. Solberg, that, in addition to having these documents that came to you from these lawyers who have sued the tobacco companies, the plaintiffs' lawyers, you've made some efforts to get documents from the American Medical Association itself. That's correct, isn't it?

A. Yeah, that's correct. In fact, I think the reason that we tried to -- number one, we didn't feel it was fair to simply write about what was ever -- what was in the documents without trying to verify that what was in the documents was, you know, accurate for that time. And that was trying to be in looking at this from all the vantage points that we could.

Q. And am I right that at least to date you've been unsuccessful in getting documents from the

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American Medical Association?

A. Well, we've been able to track articles in JAMA. Obviously, the things that have been published, American Medical News, you know, those kinds of things.

But in terms of obtaining direct information from anyone that's there at the American Medical Association during the last five years, they have not cooperated with our investigation of this whole issue. In fact, it stalled a lot of what we have been trying to write about. But as a result of them learning what I was researching and writing about, they actually kicked me off of two committees.

Q. So the fact is that for whatever -- whatever reason that the American Medical Association has or doesn't have -- which I know nothing about -- you have not -- you don't have the internal documents of the American Medical Association on this subject to balance against the documents that the plaintiffs' lawyers in this litigation have given you?

I'm not saying it's your fault, but you don't have them, right?

A. Well, when you say we don't have them, you might have to be a little bit more clear in your question, because we have a number of documents that are either from or to people in the American Medical

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Association, and we have identified that those people were, in fact, there, and so on and so forth.

Q. But the actual internal documentation of the American Medical Association during this period, the collection of their correspondence, their information, their archives, for example, you have not had available to you for a systematic analysis of the American Medical Association, right?

A. That's correct. We have not -- their archives are closed to the public, much like I guess you could say ours are. However, if you wanted to come and make a visit, we would arrange to do so. But their archive is not open to the public.

Q. And do you know, for example, Mr. Solberg, whether any effort has been made or was made in connection with any litigation to subpoena that information from the American Medical Association?

A. I don't know technically if it was a subpoena or not, but I do know there was an effort made in that litigation to obtain information and documentation directly from the AMA and AMA-ERF.

Q. And how about in any other litigation? That is litigation you're talking about years ago. I'm talking about current litigation against tobacco companies. Has there been -- have you suggested that

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any subpoena be issued in order to obtain that information?

A. We've suggested that the United States Justice Department pick up the investigation. We feel they could do a much better job than we could, especially since the AMA has not been cooperative. So that's been one of our suggestions.

In addition to that, we have tried to contact members of the staff of the AMA or those who worked closely with the AMA during that time period to determine whether or not they may have some of this information. If so, can they share it with us, so on and so forth.

Q. And actually, the primary staff person at the AMA that deals with documents is a former executive director of DOC, isn't he?

A. Dr. Tom Houston is right now on staff at the AMA, but will have nothing to do with me and doesn't return my phone calls. And yes, he was the former national coordinator for DOC, that was his title. He is as upset about this, I think, as the rest of the leadership at the AMA.

Q. So the bottom line, for whatever the reasons are, is that you don't know whether you have a full picture of the AMA's relationship with the tobacco

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companies from the AMA's point of view? AMA is -- you understand the AMA is not a party in this case, right, not a defendant?

A. I understand that. I question why they're not. But yes, I understand that. I mean -- I sympathize with your position. I don't think you can blame tobacco companies 100 percent. I think that they certainly had a role in all of this.

Q. So while you might -- while you might want the AMA to be a defendant in the case, the American Medical Association, you understand that they're not, right?

A. Yes, I understand that they're not.

Q. And so -- so the AMA, to the extent that you're making accusations against the American Medical Association, you understand there's nobody here from the American Medical Association to defend themselves, right?

A. I do understand that. I think your question earlier was whether or not I felt we had a clear picture in terms of their role and involvement in all of this, and I think that we have a very clear picture, based both on the documentation that we have and based on information that has corroborated those documents with the interviews we've conducted.

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Q. And you're willing to make that statement, even though you don't have and haven't had access to the American Medical Association's documents?

A. You know, again, I think that -- that even without any of the documents, no internal memos, no internal documents, just simply what's out there, what was published in JAMA, in other medical journals about this, what was written about in the New York Times and the Wall Street Journal, which I've used as secondary sources, the information that is public about the resolutions that were introduced and either adopted or not adopted by the AMA House of Delegates, all of that information, the testimony that they've provided to the Federal Trade Commission and the dates and times and places of when all of this has happened, I think paints a pretty clear picture that the AMA was certainly in bed with the tobacco industry in misleading the public about the important issues of smoking and health.

Q. Do you agree that, in terms of concepts, that the opposite of present mindedness that we talked about before is Monday morning quarterbacking?

A. I'm familiar with that term, yes.

Q. And that would be the opposite of present mindedness, wouldn't it?

A. Yeah, that -- that certainly would be the way

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that I'd apply it too.

Q. Now, since -- and you do understand that you're making accusations about the integrity of officials of the American Medical Association back in the 1960s, right?

A. Yes. I'm aware that's what I'm doing.

Q. Now, who was the president of the American Medical Association in 1964?

A. What part of 1964?

Q. You pick a part.

A. It was either -- I believe the first part of '64 was a Dr. Annis, and the second half would have been Dr. Ward. I don't remember their first names.

Q. How do you spell Annis?

A. I believe it's either E or A, N-N-I-S.

Q. Now, have you looked into the background of Dr. Annis?

A. Aside from his involvement?

Q. Aside from being president of the American Medical Association.

A. During that time frame?

Q. Yes.

A. No, I haven't looked into his -- are you talking about after he left as president of the AMA?

Q. No. I'm talking about what kind of doctor

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was he. Was he an oncologist that studied cancer or a pulmonologist that studied pulmonary?

A. Yes. We've got that information on him. Basic background information. But haven't studied -- we didn't interview his patients to find out whether or not they liked him.

Q. What kind of doctor was he in terms of his specialty?

A. I don't remember. I would have to check.

Q. Do you know anything about his reputation in medical circles prior to becoming president of the American Medical Association for integrity?

A. I recall reading about his reputation somewhat, that there was a number of physicians -- remember, there's a difference between practicing physicians and academic physicians. Practicing physicians, who are more likely to belong to the AMA than an academic physician who is at a teaching university or medical school, are much more in tune with what the AMA is doing in terms of policy, those kinds of things, that may -- they feel they're being affected by.

For the most part, it's dealing with issues like Medicare and socialized medicine for them. It's literally protecting their pocketbooks. That's the

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interest of the AMA.

Q. When you say protecting their pocketbooks, you mean the interest of the AMA is in protecting doctors' income from practicing medicine? Is that what you mean by pocketbook?

A. Yes. They've been described as a trade organization, both by economists, by a former editor of JAMA. They are basically a trade association for physicians, and that's -- I mean, they should stick to that. They're very good at doing that. And I think that's what they should do, rather than pretend to care about all the public health issues that face us.

Q. Do you know whether Dr. Annis is still alive?

A. That I'm not aware of, no.

Q. Do you know whether Dr. Ward is still alive?

A. I don't know if he's still alive or not.

Q. Do you know anything about the personal background of Dr. Ward who became, as you say, president of the American Medical Association in 1964?

A. The personal information? I don't recall. I'm sure that we read up on his -- what kind of physician he is and those kind of things.

Q. How about Dr. Richmond, Julius Richmond, who became Surgeon General of the United States; do you know whether he was a member of the American Medical

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Association?

A. I don't know if he was a member, no.

Q. Do you know whether he held any position with the American Medical Association?

A. I believe he has served on a committee there before, yes.

Q. How about -- do you know whether he was ever an officer of the American Medical Association?

A. I don't know if he was on the board of trustees or not.

Q. How about Dr. Steinfeld, another former Surgeon General of the United States?

I tell you this because these are Surgeon Generals who have come here and testified.

A. Yeah, they're very important people. I've talked to Dr. Steinfeld about the whole issue of the AMA and accepting tobacco money. And to get back to your issue of present mindedness and applying today's ethical standards and values in that era, we've been able to identify a number of physicians in powerful places, not necessarily part of the AMA, although some were, that objected to them receiving the money then.

In their 1964 meeting in June, at the annual meeting, there was a resolution that was introduced by the California Medical Association delegate,

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delegation, to ask the AMA to cut its financial ties with the tobacco industry. Even at that time they felt it was wrong.

Q. And what they felt was there would be a perception, by having tobacco companies give money to the Educational Research Foundation, that there would be a perception that somehow or another the American Medical Association was, to use your term, "in bed with the tobacco companies," right?

A. Based on the environment at that time, and even the public perception of the tobacco industry, yes. The AMA, a number of delegates -- or I shouldn't say delegates but some of the delegates and many of the members felt that it would tarnish their image if they maintained that relationship.

Q. And many others felt differently, correct?

A. Certainly the leadership of the AMA felt very differently about it, because they didn't entertain the resolution in 1964. In fact, they didn't entertain it until 1971 or '72, when the project came to an end.

Q. Now, do you think that taking money from a particular -- someone with a particular point of view necessarily means that you're going to be biased or prejudiced or influenced?

A. I haven't testified to that today. I haven't

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made those statements today.

Q. Well, I'm asking you. I'm asking you. Do you think that -- do you think that because an organization takes money from a particular source with a point of view, that that necessarily means that they're going to lose their objectivity?

A. Let me state first no to your answer and add to that that I don't think you can claim to be independent of a source of funding if, in fact, you included that source throughout your project, made reports to that source of funding, so on and so forth.

Q. Well, let me ask you this: The fact that six tobacco companies gave 10 million dollars, that actually was increased to 15 million before it was over --

A. Well, actually, 18 million is what was agreed upon, but when it came to end the project, there were some of the companies who I believe were in arrears, and they didn't actually cut the check. Or it was ended before the money was all spent.

Q. That was not anything the American Medical Association tried to conceal, was it?

A. What wasn't?

Q. The fact that this money had been contributed to the Educational Research Foundation by six tobacco

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companies. Nobody was making an effort to hide that, were they?

A. No. No one made an -- in fact, they publicized it in JAMA, put out news releases from time to time. They put out a news release when the additional 18 million dollars was offered by the companies.

Q. I want to go back, and I wasn't sure I understood your answer as to whether or not you thought that an organization like the AMA or any other organization's independence was compromised necessarily because they took money from a source that had a particular point of view.

A. I don't think necessarily it is, but under the circumstances surrounding the relationship, I think that their independence was compromised.

Q. Let me ask you a question. I noticed that when Mr. Rosenblatt was going through your CV, he asked you about program support for the tobacco archive, I think $25,000 given by John P. McGovern Oral History Project.

A. That's correct.

Q. And my eye went down farther, and I see that there was program support for DOC, your organization, that was given by the Scruggs Foundation in February

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1998 of $120,000. That's right, too, right?

A. Actually it was a total -- that's wrong. It's $100,000, and it was paid over about 15 months.

Q. It says -- you realize it says 120 on it?

A. Yeah. When that was printed, the pledge, the verbal pledge was for $120,000, and $20,000 of that was not received.

Q. So it's kind of like the tobacco companies. The pledge was for 18 million. But they only put up 15 million. So you're saying the Scruggs Foundation pledged 120, but they only gave you 100?

A. Actually, it's very different. We wanted the extra 20,000. It's very important that we got the extra 20,000. They stopped returning our phone calls.

Q. So, they stiffed you for $20,000?

A. They stiffed us for $20,000.

Q. Now the 100 that you got, Richard Scruggs makes a good part of his money suing tobacco companies, doesn't he?

A. As of recent, yes, he does.

Q. And what was your -- what was your total -- what was DOC's total budget for 1998?

A. '98 or '97?

Q. Well it says -- well, you know what it says, October '96 through February '98. So why don't we do

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'97?

A. 1997 was roughly 220, $225,000.

Q. So, if this 100,000, roughly, was received during that period, almost 50 percent of your total budget was accounted for by money that was coming from plaintiffs' lawyers who sued tobacco companies, correct?

A. That is correct. And I would never claim to be independent from Dick Scruggs during that time period we received that money, because the work that I did was very specifically given to him or at least to his firm and some of the firms that he was working with.

Q. With that kind of funding, one could, you think, reasonably call into question the objectivity of your organization, DOC, in terms of providing testimony about the American Medical Association?

A. How does that relate to my testimony about the American Medical Association?

Q. Well, let me ask it this way if it's not clear to you.

You have said that taking the American Medical Association, having money provided to the Educational Resource Foundation, ERF, right, compromised its independence from your point of view,

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correct?
A. That's correct.
Q. And that's because tobacco companies back in the '60s had particular positions with regard to smoking and health, and your suggestion is that, given the fact that they had positions, the American Medical Association should not have accepted this money, even though it was being used to study scientifically the issue of smoking and health, right?
A. That's essentially what I was saying, yes.
Q. All right.
A. But there was a number of people that were objecting at that time to them accepting the money, and those people, like Alton Ochsner, one of the foremost researchers in the field of smoking and health, he was pulling out lung cancers in 1910.
Q. So my question to you, is, do you see, Mr. Solberg that -- let me rephrase it this way.
You think that, in providing testimony such as the testimony you gave to this jury this morning about the integrity of the American Medical Association, you think, in doing that, you are presenting a fair and unbiased view of the information that's available on that subject, don't you?
A. The information that's available to me on

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that subject, yes, and the information that I've looked at and the research that I've done.

Q. Okay. Now, don't you think that one could reasonably question whether your views on that subject are impartial and objective, given the fact that one-half of your budget or almost one-half of your budget in 1997 came from a source which regularly sues tobacco companies to make a living?

A. But the project to investigate the AMA-ERF had started years before Mr. Scruggs ever introduced himself to us. And it's been written about. In medical journals and in the lay press it's been written about.

Q. So you don't -- I guess the answer to my question is, you don't see that your impartiality could be called into question in the same way that you've called into question the integrity of the doctors who made up the leadership of the American Medical Association in 1960s?

A. Certainly someone can question my integrity, and I will let my actions and what I've said and what I've written always speak for itself.

Q. I didn't question your integrity. The question was whether someone could reasonably question your impartiality based on the fact that a good part of

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your money has come from a source that makes its living suing tobacco companies. I didn't challenge your integrity.

A. No. For that year, I mean, let's be specific and say that was for 1997, and that about 2,000 hours worth of work was given in return for the amount of money that we received.

So in terms of, you know, verbal consulting contract, that's basically all it was. We fulfilled our end of the obligation, and indeed much of the material or information that was given to Mr. Scruggs at the amount of $100,000 has been given to Mr. Rosenblatt for free. Although if he wants to offer me $100,000, I'll take it from Mr. Rosenblatt.

MR. ROSENBLATT: I don't.

BY MR. HEIM:

Q. So it was developed for Mr. Scruggs, and now you're just kind of sharing it, is that it?

A. Well, hopefully we want to share it with everybody. Our project now involves Internet and CD Rom. We've just cut our first CD. It's not mass produced yet. But you're talking about this information being made available to everybody. Yes, the goal of an archivist is to make it accessible and available to everybody.

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Q. Let me show you a document that was asked about this morning about what the American Medical Association's position actually was with regard to labeling in 1964, and I wonder whether you might have one up there, because I have a copy that was given to me.

THE COURT: Let's see.

MR. HEIM: Your Honor, it's 5488.

THE COURT: I think the witness would like a break at this point. So, we'll take a short break, folks.

MR. MOSS: Judge, has the witness been instructed?

(The jurors exited the courtroom.)

THE COURT: Don't run away just yet.

Tomorrow is Wednesday, and I understand that Mr. Reid is going to be back tomorrow. Is he going to be here tomorrow or --

MR. KIRBY: I'm sorry, Your Honor, the question?

THE COURT: Is Mr. Reid going to be here tomorrow?

MR. KIRBY: That's my understanding, yes, Your Honor.

THE COURT: So, if you're going to use

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Cahan --

MR. ROSENBLATT: Yes, and also Nick Brookes.

THE COURT: I'm doing both sort of at the same time. I didn't know which one was going to be first.

Who is going to do Brookes?

MR. SCHNEIDER: I am.

THE COURT: You're ready with it?

MR. SCHNEIDER: Yes, sir.

MR. KIRBY: Do Doc's first.

(Recess.)

(The jurors entered the courtroom.)

THE COURT: All right. You all may be seated. Thank you.

MR. HEIM: May I proceed, Your Honor?

THE COURT: Yes, sir, go ahead.

BY MR. HEIM:

Q. Mr. Solberg, one question that I omitted from earlier when we were talking about the ads from the '30s and the '40s, and the ones I was showing you and the ones you looked at earlier, am I right that you have no idea whether any member of the plaintiff class in this case ever saw any of those ads?

A. Do I have documented proof that someone subscribed to Life or Time magazine or the Saturday

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Evening Post? Is that what you're asking me?

Q. Yes. My question is, do you know one way or the other whether ads in the Journal of the American Medical Association or -- there was a farm journal one, I forget of name of it, began with a P.

A. Progressive Farmer.

Q. Progressive Farmer, thanks. You don't know one way or the other whether any member of the class ever saw any of those ads?

A. You would be shooting in the dark if you thought that no member of the class saw that -- some of those advertisements.

Q. My question is, do you know, as a matter of fact, one way or the other whether anybody saw any of those ads, any member of this Florida class?

A. I don't know one way or the other that they've been seen by anybody on this planet other than myself and the people here in the room today who have looked at them.

Q. All right. Would you turn to Plaintiffs' Exhibit 5488, and just so the jury knows what it is, and I don't have to -- it's a good thing I didn't want to put it up on that machine, because it's not there. But -- you took it away from me.

THE COURT: In my mind, it's still there.

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MR. HEIM: You finally did it.

THE COURT: I can see it plainly.

MR. ROSENBLATT: After three months, the only purpose it serves is to be in people's way. The one time we need it --

MR. HEIM: Anyway, it's a good thing I didn't plan on it.

Just so you know what it is, Olga, could you give it to the witness?

THE CLERK: 5488.

MR. HEIM: 5488.

THE CLERK: (Handing)

BY MR. HEIM:

Q. This is the letter I think you spoke about earlier from Dr. Blasingame, signed F.J.L. Blasingame, M.D. to the chief, Division of Trade Regulation Rules, Federal Trade Commission, on February 28, 1964.

That states the position of the American Medical Association with regard to labeling, correct?

A. That's correct. Yes.

Q. Now, the actual paragraph that sets forth the position of the American Medical Association, February 28th, the last day of February in 1964, says: With respect to cigarettes, cautionary labeling cannot be anticipated to serve the public interest with any

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particular degree of success. The health hazards of excessive smoking have been well publicized for more than ten years and are common knowledge. Labeling will not alert even the young cigarette smoker to any risk to which he is not already aware.

And then to finish the paragraph: While labeling may influence the purchaser in the choice he makes in the purchase of many products, it will not, in our opinion, do so in the purchase of cigarettes. At the present time, whether the habitual smoker selects the product of one manufacturer or another appears to be relatively immaterial. The health hazard involved is substantially the same. We do not believe that the answer to the cigarette problem lies in cautionary labeling requirements. Experience in other countries indicates that the effect of such labeling at best is only to reduce temporarily the consumption of cigarettes. After a while, the habitual smoker ignores the cautions expressed on the label.

And then it goes on further, and my question to you, Mr. Solberg, is: Based on your review of the literature back there, in 1964, the American Medical Association wasn't alone in that view, that labeling was -- that warning labels were not a good idea, were they?

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A. No, they were not alone.
Q. There were other organizations that had the same view of the matter?
A. Yeah, the tobacco industry particularly was the one that caught everybody's attention, because all of the other medical organizations and health agencies, in fact, the Federal Trade Commissioner at the time said he was perplexed because here all of these health groups and medical societies were for putting the warning labels on cigarette packs, and lo and behold the AMA was the one and only health agency that was not.
Q. Well, there were actually many other organizations in the United States that thought for particular reasons that they had that labeling wasn't a good idea, and there were many newspaper editorials that were saying that they didn't think that labeling was the right way to go as well, right?
A. Yeah. Well, there was also a number of editorials that said labeling was the way to go.
Q. It was a controversy?
A. Yeah, that's the way you could describe it, sure.
Q. And the letter then goes on to describe the research program that the House of Delegates had

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approved with regard to smoking and health, correct?
A. Yeah. It neglects to mention that they had just received money from the tobacco industry.
Q. But as you said, they published that in JAMA, correct?
A. Yeah, they did, about two and a half weeks earlier. That had been published in JAMA. But I think it would have been an important disclosure to make before the Federal Trade Commissioner who was dealing with such an important issue.
Q. And in fact, the letter doesn't even say -- the letter says that they think what really should happen is that if there are going to be warnings on cigarettes, that it should be enacted by Congress and not by regulation, right?
A. That's correct, and that's exactly what happened about a year later was that Congress actually did enact that.
Q. Right. Because the AMA says in its letter: For these reasons -- and I'm referring to Page 3 -- it is most appropriate that a subject of this magnitude regarding the labeling and advertising of tobacco be enacted -- I'm sorry, be controlled by the Congress of the United States in the form of enacted legislation, if any, rather than by promulgated administrative

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regulation, correct?

A. Yeah. I'm reading the same area, yes.

Q. As you said, that is exactly what did happen. That is, the Congress not only -- not only enacted legislation, but actually drafted the warning labels, correct?

A. Yes, that's correct. I think it's important, though, to understand that where this fits in in the context of the AMA at that time. This is not official AMA policy. This is Dr. Blasingame taking it upon himself to act on behalf of who? The delegates did not vote on this. This could have been brought up in June of '63, December of '63, and it wasn't.

And in fact, they had not -- they had decided in June of '63 to wait until after the Surgeon General's Report came out and then decide. But the House of Delegates didn't get the chance to make this decision.

Q. Let me ask you about that, Mr. Solberg. How often does the House of Delegates of the American Medical Association meet?

A. Twice a year.

Q. And when was the next time that the House of Delegates was to meet following the publication of the proposed rules January 22nd, 1964?

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A. I should add to that that they have convened on special sessions, much like Congress can convene special sessions when something of that magnitude warrants doing so. So technically they can meet when they feel they need to.

Q. How many members are in the House of Delegates?

A. Almost a couple hundred. I don't remember exactly.

Q. A couple hundred doctors? A couple hundred doctors with their own private medical practices or teaching positions, whatever, are the members of the House of Delegates of the American Medical Association, right?

A. That's correct.

Q. So, having a meeting of the American Medical Association House of Delegates requires all of those doctors to come from all over the United States to attend a meeting, correct?

A. That's correct.

Q. All right. And there are regular scheduled meetings that take place, or at least back then twice a year, right?

A. In June and December.

Q. Okay. And that kind of answers the question

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I asked, which is when was the next meeting going to be, the next regularly scheduled meeting of the American Medical Association? And I gather it would have been June of 1964, right?

A. That is correct.

Q. And the requests for comment on the proposed rules, when was that due?

A. I would assume roughly around the time that this letter -- I'm sure there was a close-off period February, early March.

Q. So, the only way for the American Medical Association to respond within the time period was, as you suggested, to call a meeting of the entire House of Delegates, 200 or more members from around the United States, or to permit the executive committee --

A. That would be the board of trustees.

Q. Board of trustees, to act out -- act for the House of Delegates, correct?

A. That's correct. The board of trustees can act on behalf of the delegates without convening a special session. And as you'll notice, this is signed by one person. When the board of trustees signs off on a position, all of their names are added to the letter.

Q. And is it your testimony, without having seen the documents of the American Medical Association, that

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Dr. Blasingame was off on a frolic and detour of his own and signing this without having the authorization of the board of trustees?

A. In conducting my research, which includes reading sworn testimony by members of the AMA who were there at that time, there was some question as to whether or not that is even his signature.

Q. Have you ever seen anybody dispute in a court of law that Dr. Blasingame signed this?

A. Again, I can only tell you that, under sworn testimony, there were questions as to whether or not that was his testimony.

Q. Well, didn't somebody ask Dr. Blasingame whether it was his own signature?

A. Well, Dr. Blasingame, if he's still living, is probably about 96 right now. Last I heard he was living in the State of Texas, but I don't know that you could ask him any question that I would be able to answer.

Q. Well, when was this so-called controversy about whether there was Dr. Blasingame's signature?

A. That was during Dr. Howard's deposition, Dr. Ernest Howard, who was first the assistant executive vice president to Dr. Blasingame, and his successor as the executive vice president of the AMA.

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Q. When in time, Mr. Solberg?
A. 1984.
Q. So did anybody question back in the 20 years from '64 to '84 whether Dr. Blasingame signed this letter?
A. Did anyone question it?
Q. Sure. I mean --
A. Or are you saying question him?
Q. Question him.
A. I mean, it was questioned. The question was posed to Dr. Howard during his deposition, and he did not recognize that necessarily to be the signature of Dr. Blasingame. Whether they -- anyone has asked Dr. Blasingame himself, I'm not aware.
Q. Wouldn't you think that would make sense? If you wrote something and then somebody else said: I don't know whether that's Mr. Solberg's signature or not, wouldn't you think somebody would ask Mr. Solberg whether it was his signature? Wouldn't you be the best person to know that?
A. I would think so, certainly, yes.
Q. Now, do you know of any documentation, do you know of any evidence, any documentation that this position that was taken by Dr. Blasingame on behalf of the American Medical Association -- he's listed as the

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executive vice president -- when it was made back in 1964 was unauthorized?

A. Well, again, this was never adopted as policy for the AMA. If the board of trustees had acted on behalf of the delegates, this would have been made official policy of the AMA at the time that it was done. It was not made a record of official policy within the AMA.

Q. Okay. Well, my question was this was -- this is a letter to the Chief, Division of the Trade Regulation Rules, Federal Trade Commission, correct?

A. That's correct.

Q. Okay. It was no secret it was reported in JAMA that the AMA had submitted testimony on proposed labeling and advertising, correct?

A. That is correct, after this was written.

Q. Okay. Now did you, in your search of the literature, find any groundswell of indignation or opposition -- let me rephrase it.

Did you find anyone questioning the -- Dr. Blasingame's authority with regard to this particular letter?

A. Yes. There was a number of individuals both in Congress who were aware of this testimony and also physicians, researchers who -- you know, were also very

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critical of this presentation to the Federal Trade Commission.

Q. I think you misunderstand my question. They had a board of trustees, didn't they?

A. Yes, sir.

Q. How many members on the board of trustees?

A. I don't remember, 18, 22, something like that.

Q. 18 or 22 doctors?

A. Correct.

Q. Do you have any evidence that these 18 or 22 doctors rose up and said: What's Blasingame doing sending this letter?

A. What I'm telling you is -- I'm showing you that there's a lack of evidence, that's what I'm saying, in that I don't think that -- I think one would be very naive to believe that the -- somewhere along the lines somebody from the AMA, Dr. Blasingame or someone else, wrote a memo to the tobacco industry saying we have done as you have asked, or we have submitted certain type of testimony to the Federal Trade Commission.

I don't think, you know, people do that, ever. It's kind of crazy. And the analogy would be what's going on with the International Olympic

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Committee. People are denying things like crazy.

Q. Well, I -- that wasn't the question I asked you. So let me ask it again.

Let me precede it with this question, in view of your last answer:

Sitting here today, you can't tell this jury that you think a letter may have been written, but because you can't find it doesn't mean that it wasn't written, right? I mean, that's kind of like trying to prove a negative.

MR. ROSENBLATT: Objection, Your Honor. I think we're getting very far afield.

THE COURT: Let's go sidebar for a moment.

(The following proceedings were had at sidebar:)

THE COURT: Maybe we've got too many trees and too much forest here. Exactly where are you going with this?

MR. HEIM: First of all, let me say it was an enormously poorly phrased question.

MR. MOSS: No, it wasn't.

MR. HEIM: It had two negatives in it. Whatever.

What I was trying to say is, in response to my last question, what he said -- he did not answer it.

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But what he did add was it would be naive to think that somebody would write a letter acknowledging a relationship, people know better than to write a letter, and that doesn't mean that the relationship did not exist. That's what he's saying.

He's pointing to the absence --

THE COURT: What we're talking about is a letter by Blasingame, whatever his first name is.

MR. HEIM: To a tobacco company, a mythical letter that he doesn't know existed.

THE COURT: That showed up in his files someplace?

MR. HEIM: No, no. What he's saying, Judge --

THE COURT: Where did he get the letter?

MR. HEIM: He doesn't have a letter. That's what he's saying.

MR. ROSENBLATT: The Blasingame letter exists.

MR. MOSS: We're talking about a different letter.

MR. HEIM: He says, I don't have a letter, but that doesn't mean there wasn't one written.

THE COURT: I thought he had a letter.

MR. HEIM: No.

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THE COURT: He hasn't seen such a letter.

MR. HEIM: No. Maybe there's a better way to ask it.

MR. MOSS: But the problem is, he hasn't answered the question. Bob asked him: Do you have any evidence that he did not have authority to write that letter?

THE COURT: Well, see, that begs the question. The point is, was there ever a letter of this type in existence?

MR. HEIM: You are talking about two different things.

THE COURT: I understand that. If there was never such a letter --

MR. MOSS: Bob never brought up the letter. What happened was Bob said with regard to Blasingame's letter to the FTC, you questioned his authority. Have you seen anybody from the board of trustees --

THE COURT: Did they ever object?

MR. MOSS: -- ever question his authority? He then goes off and says out of the clear blue, well, no one would ever write a letter like that because it's like the Olympic people. They never admit -- we got way, way off.

THE COURT: The point being there was a

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Blasingame letter to the FTC, and the issue was, did anybody ever protest the letter?

MR. MOSS: Did anybody from the board of trustees?

THE COURT: And is there any evidence that anybody in writing ever made a protest, and the answer is yes or no.

MR. ROSENBLATT: He doesn't have any evidence.

THE COURT: So, what's the problem? Let's go back and ask him that question.

MR. ROSENBLATT: We're getting so convoluted on this.

MR. MOSS: Because he didn't answer the question.

THE COURT: He wrote this thing, also prefaced it saying he did this unilaterally and didn't have the authority.

MR. ROSENBLATT: It never became the official policy, he says.

THE COURT: So what? So the letter is there, some guy wrote the letter individually, and it's acknowledged that it wasn't the policy of the AMA or adopted by it.

MR. HEIM: I think I can solve this with two

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questions. I'll tell you what the questions are. I'll tell Stanley.

MR. MOSS: Don't do that.

MR. HEIM: Two simple questions. One is: You've never seen that letter from the board of trustees criticizing Dr. Blasingame? That's Question Number 1.

And Question Number 2: You've never seen any letter from Dr. Blasingame to any tobacco company or representative, or a letter from a tobacco company representative to Dr. Blasingame on this subject?

Two questions. You don't like those?

THE COURT: I don't care. You can ask any question you want.

MR. ROSENBLATT: Ask one of them. Take your pick. Don't ask both.

MR. MOSS: No, no. We would never have been here if we --

THE COURT: I think what we're doing is opening the quicksand pit.

MR. MOSS: We would not have if he answered the question.

THE COURT: I understand. But even if he answers the question, I think the quicksand is there. I don't know what you need it for. Go ahead.

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MR. HEIM: Let me see if I can straighten it out.

THE COURT: Ask it.

(The sidebar conference was concluded, and the following proceedings were held in open court:)

BY MR. HEIM:

Q. Mr. Solberg, let's see if we can straighten this area out a little bit.

Am I right that you haven't seen any letter from a member of the board of trustees of the American Medical Association to Dr. Blasingame criticizing him for having made this statement to the FTC?

A. That's correct. I have not seen such a letter.

Q. All right. Now, and in terms of actual evidence, you don't know of any correspondence or communication between any tobacco company and Dr. Blasingame urging him to take the position that he took in this letter?

A. You've heard the saying "money talks" or "money speaks louder than words"?

Q. I've heard it. I would like you to answer my question.

A. I'm not aware of a document between the tobacco industry and Dr. Blasingame regarding that he

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take this specific position.

Q. All right. Now, in fact, just so the jury has a full picture of this, do you have in front of you Plaintiffs' Exhibit 5495?

A. No, I don't.

Q. I'm sorry. I can give you mine.

Do you have it, Olga?

THE CLERK: I have it right here. (Handing)

BY MR. HEIM:

Q. Just so we know, if you turn to the second page, this is in the Journal of the American Medical Association on April 6, 1964.

A. Uh-huh.

Q. And this goes to -- by the way, does JAMA go to every member? Do they get it as part of their dues?

A. As part of their dues, yes, members.

Q. So, if there were 600,000 members back in the early '60s, each one of them would get each edition of JAMA, the Journal of the American Medical Association?

A. That's correct.

Q. And this out of the April 6th meeting. It actually reports, if you look at the second column, it reports on an accusation that was made by one of the members of Congress in the House that the AMA had made a deal with tobacco companies?

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A. You're on Page 2?
Q. Yes, I am.
A. Yeah. Under the March 19, 1964 heading.
Q. Yes. It says: Representative Thomas accuses the AMA of making a "deal" with tobacco companies and tobacco state congressmen, citing testimony on FTC regulations.
You see that?
A. Yes, I see that.
Q. And you'll see the very next item refers to the AMA's response, the official response of the American Medical Association at that time, at least as published in JAMA, right?
A. Yes, I see that.
Q. And it says: AMA protests outrageously slanderous implications -- that's in quotes -- of Thompson's charge, an address that no such thing has ever, even been contemplated.
Correct?
A. I see that, yes.
Q. And then it goes on after that talking about Dr. Ochsner thinking the AMA was derelict in its duty for failing to support the FTC proposal.
So it really lays out for all of its members exactly who is saying what about the whole subject,

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right?
A. Yeah. As of April 6, 1964.
Q. Okay. Let me ask you some questions, just a few questions about the ERF itself. That's the Education Research Foundation?
A. Yes, Education and Research Foundation.
Q. And one of the projects that it undertook was this project on smoking and health that we've been talking about?
A. That's correct.
Q. Okay. And the ERF, the AMA-ERF, existed before the project on smoking and health. I think you said that.
A. Yes. I testified earlier today, yes.
Q. And this actual project that it wanted to do on smoking and health had been funded in a small amount by the ERF itself. I think you said $500,000.
A. That's correct.
Q. And the goals, the goals of it, as it was stated by the ERF, were, in effect, to look at the issue of smoking and health; to find out what, if anything, in cigarette smoking caused health consequences; and to -- if it was possible to do it to eliminate those things in cigarettes. I mean, that's generally what it was, wasn't it?

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A. That's basically what they stated, yes.
Q. And those were laudable goals, were they not?
A. They were the same goals that the tobacco industry was pursuing, which was to find a, quote, less hazardous cigarette.
Q. But these goals, when they announced the list, was before they got any tobacco company funding, correct?
A. When they announced them was in December of 1963, and the person who was brought in to direct that project was brought in November of 1963. They started -- actually, before it went to the AMA-ERF, they started something called the Biomedical Research Institute at the AMA, which ran from 1963 until about 1970. That's where the project originally was intended to be, and they brought in a person to run it there, and he said he would have nothing to do with that project.
Q. Okay. My question was, in deciding what the goals of the program would be, and we know what the goals are because they're stated right in the project, identify what in cigarette smoke causes health issues, and then try to -- they wanted to try to find the mechanism that was actually causing cancer, and if they could, to eliminate it in tobacco smoke.

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Those goals were the AMA-ERF's goals, whether or not they happen to coincide with what tobacco companies wanted to do as well, right?

A. Certainly, yes, those were the goals that were established for the AMA-ERF project. And those goals did not change after they received money from the tobacco industry.

Q. Okay. So, after they got the money, the goals stayed exactly the same?

A. They stayed exactly the same, that's correct.

Q. And actually, I think as you said earlier today, the AMA-ERF didn't actually get the money; the money was a pass-through to universities and research institutions who were actually going to do the actual work.

There may have been some administrative money for the ERF, but the actual funding was not to go to the actual ERF, it was to go to the scientists to pay the scientists who were doing the work, right?

A. Yes. Although, technically, a large number of grants were given to members of the AMA-ERF committee. So, technically, while the AMA-ERF committee itself and the AMA-ERF as a fiscal agency may not have benefited above and beyond whatever administrative costs were charged to the project,

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certainly the careers of those committee members was greatly benefited as a result of the project.

Q. Let me ask you this: The tobacco companies, to your knowledge, did not choose the leader of the AMA-ERF, correct?

A. Well, technically three of those original members, Dr. Maurice Seevers, Dr. John Hickam and Dr. Charles LaMaistre had been previously approved by the industry to serve on the Surgeon General's committee. So three of those members were approved.

Q. Let's talk about that.

So three of the members of the ERF -- what do we call it, the board of trustees or what?

A. No, the AMA-ERF has a separate board of directors.

Q. Yeah, I know, but --

A. This is the AMA-ERF committee --

Q. Advisory board, the one that passed out the money. That's the one I'm interested in.

A. It's the Committee on Tobacco and Health.

Q. Okay. Now, I think you said three members of that committee were actually on the Surgeon General's Advisory Committee, right?

A. That's correct, the three I just mentioned.

Q. And you said that the members -- they had, in

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effect, been approved by the tobacco companies, because when the Surgeon General decided to set up a group of scientists to serve on the Surgeon General's committee, one of the ways that was used to ensure objectivity was to ask the tobacco companies what they thought of these scientists as well, right?

A. They were very careful not to choose anyone who had made public statements about that issue.

Q. And that's because the Surgeon General wanted -- certainly the Surgeon General wanted people of stature in the sciences, correct?

A. Well, certainly, yes.

Q. And the Surgeon General of the United States wanted people of integrity, right?

A. I don't know how integrity falls into it. I'm sure he didn't want people that didn't have integrity.

Q. So then --

A. I don't know what the criteria is. I know one criteria that was published and they discussed in the foreword to the Surgeon General's Report was they were very careful to make sure that these individuals hadn't made public comments about the tobacco and health issue.

Q. And the reason for that is that they wanted

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the Surgeon General's Report to have a great deal of credibility, correct?

A. Which -- exactly right. Which means -- which really, I think, gets to the heart of the matter, which is how important that Surgeon General's Report was in 1964; that these men who hadn't been working together, hadn't dealt with the tobacco and health issue come together to review the seven or eight thousand pieces of literature out there in the scientific world and say: These are the conclusions. This is how important and overwhelming this information is, and these are the conclusions that we're going to report together.

Q. Okay. So, as far as you know, the people who were making that judgment, who were decided on by the Surgeon General, who hadn't made any public statements, were people of scientific competence and people of integrity, right?

You wouldn't want to have people that didn't have both qualifications on a Surgeon General's Advisory Committee, would you?

A. Again, my answer to the question that I stated earlier was the only criteria that is published in the Surgeon General's Report itself is that they had not made public statements about this issue.

It doesn't go into the talk about their

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credibility as scientists and their integrity as people.

Q. Have you ever looked, Mr. Solberg, at the professional credentials of the people on the Surgeon General's Advisory Committee?

A. I've interviewed several of them.

Q. Have you reviewed the credentials of those people in terms of their medical stature, their stature in the medical community?

A. Some of them I have read their CVs.

Q. And do you agree that the members of the Surgeon General's Advisory Committee were people of stature, of substantial stature in the medical community?

A. Yes, I would agree with that comment, and I think that some of those afterward went on and flourished even more so, after that report was released.

Q. And the point that you were making or that I was making, I forget which, is that three members of the Surgeon General's Advisory Committee were on the AMA-ERF advisory board, right?

A. That's correct.

Q. And they were selected by whom? Who selected the members of the ERF advisory committee?

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A. Dr. Maurice Seevers, who was the chairman of that committee.

Q. And Dr. Seevers was the member of the Surgeon General's Advisory Committee?

A. That's correct. Yes, he was, from the University of Michigan.

Q. And you have no evidence, do you, that any tobacco company played any role in the selection of the members of the AMA-ERF Advisory Committee?

A. Any role other than that which I already stated, which was that three of those members had been approved by the tobacco industry to serve the Surgeon General's committee.

Q. My question, Mr. Solberg, is: When they were selected to be on the ERF Advisory Committee, that committee, do you have any knowledge that any tobacco company played any role in their selection to be on the ERF Advisory Committee?

A. I don't have documentation to that effect. I think that in looking at -- I think the point that I was trying to make before was that those three individuals who served on both committees were awarding themselves grant money that came from the tobacco industry to the AMA-ERF.

Q. Now, let's talk about that for a minute.

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Did they come from prestigious universities?

A. Yes, they did.

Q. Did those universities have among the best scientific research facilities in the United States?

A. Yes, they did.

Q. And do you know whether or not in advising -- in making grants to the universities of which they may have been affiliated, they abstained from voting or were even in the room at the time that those grants were made?

A. I don't have any knowledge. In fact, they've never published anywhere at that time or to this date how the grants were decided, whether or not there was even a peer-review process.

Q. So at least as far as you know -- are you familiar with the process by which, when a committee makes awards, if a member of the committee might be affected by the award, the member leaves the room and doesn't participate in that decision?

A. Yes, similar to the advertising agency that represents the cigarette companies that says they don't advertise to children, and then has another division that advertises toys or something. So they have this big imaginary wall that exists in their company, if that's what you are referring to, so they don't know

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what one side is doing nor the other side is doing.

MR. HEIM: Judge, I'll move to strike that answer. It's not responsive.

THE WITNESS: I was just making an analogy.

THE COURT: I agree. It's really not responsive. Strike it.

BY MR. HEIM:

Q. So let me ask the question again. You are familiar with a procedure by which the committees function, in academic and other settings, whereby when a grant proposal comes up, if there's an affected member of the committee, he or she doesn't participate and might leave the room?

You're familiar with that procedure?

A. I am familiar with that procedure. And based on the number of grants that were awarded to these individuals' institutions, they would not have been in the room for the first four years of the project, is what I'm trying to tell you.

They can't get up and leave the room -- they couldn't have attended a single meeting, because literally -- I mean, Dr. Mickey LaMaistre made off like a bandit in this project. Southwestern Medical School in Texas, part of the University of Texas, got somewhere near 2 million dollars out of that money out

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of the first 10 million dollars that was awarded to the AMA-ERF from that industry. So, why would he be serving on the committee if he had to leave the room constantly?

Q. Was he a member of the Surgeon General's Advisory Committee?

A. Yes, he was.

Q. And he was selected by the AMA to be on the ERF?

A. He was selected by Dr. Maurice Seevers, who was also on the Surgeon General's Advisory Committee.

Q. Do you know when he was selected?

A. Prior to -- according to what's been written, prior to January 31st, 1964.

Q. And do you have any information at all, Mr. Solberg, that the tobacco companies played any role whatsoever in the selection of the projects that were being undertaken at any of these universities?

A. Did they influence the decisions that were made in handing out the grant monies?

Q. Well, no. My question was: In deciding what specific research would be done by the ERF grant recipients, do you have any information that any tobacco company played any role in the formulating of the grant proposal, for example?

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A. Well, that's a very interesting question, because a number of the projects -- in fact, about one-third of the projects that were funded by the AMA-ERF -- were also funded by the Council for Tobacco Research. And it's not uncommon, as a reviewer for two foundations, a grant reviewer for two foundations, which I am, it's not uncommon to receive a proposal, turn it back to that person or individual or institution and say: You know, this looks interesting, but could you possibly revise sections A, B, and C, and could you also possibly seek to find other support for this project so that we might be willing to support part of it and someone else maybe can support the other part?

So that's a very interesting -- I haven't even thought of that before, whether or not someone in the tobacco industry was part of getting a project proposal, as you said, sort of written in a certain way.

Q. So that fuels your speculation; is that right?

A. Well, no, it's a very interesting point that I hadn't considered.

Q. So now would you answer my question: Do you have any information, do you have any data, do you have

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any correspondence, do you have any evidence of any kind that any tobacco company ever influenced a project that was undertaken by the AMA-ERF? Not speculation.

A. Right. I think you would have to go to the meetings, have attended the meetings, and take a look at the correspondence that transpired as a result of those meetings, ask the question why were tobacco industry attorneys invited to participate in meetings with the AMA-ERF, and tobacco company executives, and ask yourself whether or not that, in combination with 10 million dollars, in combination with another promised 8 million dollars later has an influence on that organization.

And my answer to you is yes, they had an influence on that organization.

Q. Is the answer to my question, though, no?

A. Why don't you restate your question?

Q. Okay.

A. Let me see if I have it right.

Q. No, I'll restate it for you.

My statement is: Aside from your speculation, do you have any evidence that any tobacco company played any role in influencing any grant proposal that was made by any of the university scientists to the ERF? Let's start with that.

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A. And again I will say, I don't think it's speculation to have looked at the participants of the meetings of the AMA-ERF that included attorneys and executives from the tobacco industry, members of the Council for Tobacco Research and the Tobacco Institute all gathered together at headquarters in Chicago at the AMA -- it is ridiculous to suggest that someone would be so naive as to think that they did not have some influence on the way that project was carried out through the AMA-ERF.

Q. Mr. Solberg, have you reviewed minutes of the AMA-ERF Advisory Committee when they awarded grants?

A. Some of the -- not from when they awarded grants, no. But I've read some of the minutes from some of the meetings that they've had.

Q. My question is -- and I gather your answer is you have not reviewed minutes of meetings where they awarded grants.

A. Not where they awarded grants. It's where these projects are presented in abstract format and/or for publication or for a lecture.

Q. So you're referring to meetings where results of studies or projects are being reported; isn't that what you're talking about?

A. That is correct.

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Q. So you have no information -- just so we distinguish and the jury understands, you have no information that any tobacco company executive or any tobacco company lawyer ever participated in any meeting at which time grants were being awarded to institutions to do research under the auspices of the AMA-ERF?

A. The statement that you just made is correct. I don't have a document or correspondence, something that shows that they were there helping the AMA-ERF committee members decide how to hand out the grant money.

Q. Now, do you have a copy of the final report of the AMA-ERF on tobacco, on its tobacco study?

A. At home, not in front of me.

Q. Let me give you one.

MR. HEIM: Your Honor, this is Defendants' Exhibit 21779 marked for identification. This is for the Judge and this is for the witness, or either one. (Handing)

BY MR. HEIM:

Q. Mr. Solberg, I have provided you with Defense Exhibit 21779, which is the 1978 Tobacco and Health Report by the American Medical Association Education and Research Foundation. And since you've said you have it at home, I gather you've read it?

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A. I haven't read it word for word, but I had to go through and count exactly the number of abstracts that were presented and who funded each research project and what the titles were.

Q. I gather, then, you haven't read the actual studies?

A. Some of them I've looked at. But for the most part, I'm not going to read 795 studies.

Q. And you don't criticize the data that are used in these studies, do you? You have not been critical of the data that is actually used in the various studies that appear in this book, the scientific data?

A. Right. No. And the purpose of my review of this was to, again, determine the name of the institution, the university, the medical school, whatever it may be that received the money, who conducted the research, whether or not it was a member of the Council for Tobacco Research, the Scientific Advisory Board or the AMA-ERF, and whether or not it was published.

Q. Okay. And as far as you know, the actual scientific work that was done by the various scientists at these universities, many universities, is -- as far as you know, it's good science?

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A. I didn't review it. I did not review the science, so I would have no way of knowing.

Q. And you wouldn't know anyway whether it was good science. I don't mean that critically. But you're not a doctor or a scientist, right?

A. I knew what you were saying, and I didn't take it critically.

Q. Now, if you look at the -- if you look at the preface to this that is written by Dr. Sammons, executive vice president of the American Medical Association, it's on Roman IX?

A. Yes, I see that.

Q. You'll see where it says: "In January of 1964, the American Medical Association Education and Research Foundation, AMA-ERF, entered into a five-year agreement with six tobacco companies to conduct a comprehensive program of research on tobacco and health.

"The research was to be devoted to the study of human ailments that may be caused or aggravated by smoking, the particular elements or elements that may be the causal or aggravating agents, and the mechanisms of their action.

"The six participating tobacco companies pledged to contribute a total of 10 million dollars to

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the AMA-ERF to finance this five-year research effort."

And this description here in the preface, this is the research effort that you were talking about where the 10 million dollars later became more like, I think you said, 15, right?

A. Well, 18 pledged and 15 received. Something like that.

Q. Fifteen actually received.

A. Right.

Q. As far as you know, that first paragraph accurately sets forth the goals of the AMA-ERF program as originally constituted?

A. Slightly different, actually, where it talks about the element or elements that may be the causal or aggravating agents, says -- and then the mechanisms of their action. It was actually to determine whether they could be removed or not from the product.

Q. In addition to those things.

A. Correct.

Q. And then, if you go on with me, you'll see that the people who are on the AMA-ERF Committee for Research on Tobacco and Health are listed on Roman II.

A. There were actually several changes, and there were one or two deaths during the project.

Q. Several people died and there are footnotes

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as to their deaths?

A. Right. The original committee -- well, that's not actually listed here either.

The original committee was much smaller than the total number that served.

Q. Well, the people that you mentioned earlier. Dr. Seevers, he's shown as chairman, even though it shows that he deceased.

A. Right.

Q. Dr. LaMaistre, chancellor, University of Texas. He's there, right?

Who was the third one you mentioned? I can't remember.

A. Dr. Hickam.

Q. Dr. Whom?

A. John Hickam.

Q. And he's also listed chairman, department of internal medicine, University of Indiana?

A. That's correct.

Q. See him there on the first column.

Now, if you look at the very back of the document, it has a list of the participating institutions, just the page -- if you go to the last three pages. And it has as participating institutions, actually three pages of participating institutions,

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both inside and outside the United States. You see that?

A. Yes, I see that. Starting on Page 367.

Q. Yes, thank you.

And they range from Harvard Medical School and Harvard University on the one hand to the University of Iceland Science Institutes on the other, don't they?

A. Yes. I was flipping back between there and Roman Numeral IX, because it says -- this has to be a typo because it says between 1946 and 1975, 844 researchers in 85 United States and 13 foreign research institutions. I thought there was 50 United States, but -- I think the way that sentence is worded -- but I understand.

Q. You're right. Because then it goes on to say: Produced 795 publications and reports on the relationships of tobacco and health on absorption, distribution, metabolism, excretion and toxicology; carcinogenesis; cardiovascular systems; central and autonomic nervous system; gastrointestinal tract; reproduction; and respiratory system.

And that looks like it covers the waterfront of all of the organizations that are in the back of the book. Right?

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A. Yeah. I'm assuming that there's 85 research institutions from the U.S. and 13 foreign institutions that are listed in the back of the book, which would --

Q. Me too.

A. -- make 98 total.

Q. Let me ask you some questions about some of the things that were studied here. Turn to Page 34.

Do you see item Number 7, Study of Smoke Condensate of Cigarette Tobacco as a Possible Bladder Carcinogenic Agent in the Copenhagen Rat? That was done right here at the University of Miami, right?

A. Number 7 on Page 34, yes, I see that.

Q. See where it says University of Miami, School of Medicine?

A. Yes.

Q. And that study was done as part of the funding provided by the tobacco companies to the ERF fund?

A. Right. That was not published. That was just simply made, a progress report to the AMA-ERF.

Q. Okay. Look at Page 44.

Item 34, Cocarcinogenic and Tumor-Producing Agents in Tobacco Carcinogenesis. Does that indicate that this was published in the journal of the National Cancer Institute?

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A. Yes, in 1976.
Q. Okay.
If you go with me to Page 88, you'll see a study, Effects of Inhaled Acetylaldehyde -- and that one is going to give me a problem -- and Propiolaldehyde on Blood Pressure and Heart Rate, done at the Medical College of Virginia.
This was published -- this is another published study in the Toxicology and Applied Pharmacology publication.
A. Yeah, indicating in 1972, University of -- actually the Medical College of Virginia was the institution for one of the members of the AMA-ERF committee.
That was, I believe, a Dr. Paul Larson, who at the same time was receiving -- well, he was serving as a consultant to a tobacco company.
Q. By the way, is it frequent, is it commonplace for studies to be cofunded?
A. Oh, I stated that earlier today. Yes, certainly.
Q. I thought you said that earlier today.
A. Certainly.
Q. So it's not unusual for you to see research studies that have as their funding sources things like

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National Institutes of Health grant and an AMA-ERF grant, for example, right?

A. That's correct. There are several examples in here. I stated that earlier.

Q. And there are examples in here of cofunding of the AMA-ERF National Institutes of Health, and the Council for Tobacco Research, right?

A. That's correct. And even some tobacco companies sponsored some of these projects directly; mainly a Swedish tobacco company.

Q. So cofunding, all that means is some studies cost a lot of money to do, and they try to get money from as many sources as they can, right?

A. Essentially that's what they mean. I don't have any objection to that at all. I have an objection to members of a committee working directly for the tobacco industry while at the same time pretending to have an independent viewpoint on a separate committee.

A quote "independent committee" is the way it was described by the AMA-ERF and by the industry.

Q. And it's your view that, again, just so we understand what you're talking about with an answer like that, that people who served on the Surgeon General's Advisory Committee and the ERF at the same time, somehow that was a problem?

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A. That wasn't at the same time.
Q. So at different points in time, did you consider that a problem?
A. Did I consider it a problem? I considered those members -- yes, I considered that a huge problem. I think those three members that I mentioned, Dr. Maurice Seevers, Dr. John Hickam and Dr. Charles LaMaistre who served on the two committees must have had, in between January 11 of 1964, which is when the Surgeon General's Report was released and you know, January 31st, when they received the money from the tobacco, they must have had a frontal lobotomy to have undertaken this kind of a project.
Q. And your frontal lobotomy thesis has no support in any evidence other than your speculation; is that right?
A. Well, let's look at the evidence, then. The evidence is that they unanimously agreed to publish the Surgeon General's Report and release it as the landmark report that it is, and literally within weeks after its release, decided that maybe those things were wrong or whatever it was, after they had just three weeks later and 10 million dollars later, they had to change their minds and decide that more research was necessary.
Q. Let me ask you this, Mr. Solberg: Have you

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ever read the 1964 Surgeon General's Report?
A. Portions of it, yes.
Q. Portions of it? You haven't read the whole thing?
A. I have not read the entire report, no.
Q. Isn't it a fact that in 1964, the Surgeon General of the United States thought that more research ought to take place on these issues of the relationship between smoking and disease?
A. Not the relationship -- the causative relationship between smoking and lung cancer.
Q. Mr. Solberg, when you look at the 1964 Surgeon General's Report, doesn't it say in that report that the relationship between smoking and lung cancer in men is a matter of judgment; that the members of the advisory committee --
A. It also says that there is a cause and effect, and that there is a dose/response relationship. That's as clear-cut as you can get.
Q. Mr. Solberg, let me ask you this question: Does it call for more research to be done on the subject of the relationship between tobacco and health? Does it ask for more research to be done on that subject?
A. Yes, and not on the subject of whether or not

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smoking causes lung cancer in males.

Q. How about whether smoking causes lung cancer in women?

A. They said that that was a -- certainly a risk, there was an association, but they don't make the same conclusion at that time.

Q. More research was necessary, right?

A. I'm not disagreeing. I just said yes, and I added to the end of my answer.

Q. And many of these projects that you find in this book are research on the subject of the relationship between smoking and a whole bunch of other diseases, aren't they?

A. Yes, that's correct. And at the end of all of this research, what was the conclusion of the AMA-ERF?

Q. So -- and I'm going to come to that.

A. Okay.

Q. So there's nothing -- there's nothing inconsistent at all with these three gentlemen of competence and professional standing, selected by the Surgeon General of the United States to be on their Advisory Committee, coming to a conclusion that in their judgment smoking caused lung cancer in men, but also wanting a lot more research to be done on the

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whole issue of the relationship between smoking and a whole bunch of other issues out there, right?

A. Well, it's interesting, because you know, the question about more research being needed, which you've been talking about, the AMA-ERF's need for more research ended when the tobacco company money ended. And I think that that's a very significant part of this whole puzzle that needs to be put together.

Q. Now, do you want to answer my question?

A. That was in answer to your question. I just answered it.

Q. Let me ask it again. Am I right that there was nothing, nothing inconsistent between these three gentlemen, these degree doctors serving on the Surgeon General's Advisory Committee, and saying in their judgment the evidence was sufficient to state cause with regard to lung cancer in men -- but that's as far as it could go -- and calling for a great deal more research to be done on the question of smoking and other diseases and what it was in smoke that was causing disease?

Nothing inconsistent about that, is there, Mr. Solberg?

A. And I answered your question by saying: At what point did they stop asking for more research.

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THE COURT: I think we're beating a dead horse. Let's move on.

BY MR. HEIM:

Q. Turn to page 145, Study 194: Cardiovascular effects of long-term cigarette smoking and nicotine administration.

See that one?

A. Yes, I see that.

Q. Surgeon General had not determined in 1964 that smoking caused cardiovascular disease, had he?

A. Not cause-and-effect relationship at that time, no.

Q. And this was published in the American Journal of Cardiology, this study, correct?

A. Yes, in 1976.

Q. Turn to Page 267. The study there: Maternal Smoking During Gestation and Infant Morphologic Variation: Preliminary Report Concerning Birth Weight and Incidence of Transverse Palmar Creases. No conclusion in the 1964 Surgeon General Report about maternal smoking during gestation and infant morphologic variation, is there?

A. There was a comment there that was discouraged.

Q. Was there any conclusion?

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A. No, that was not included in the conclusions.

Maybe this will save you some time. There were a number of studies under -- funded by the AMA-ERF project that I think added greatly to the scientific literature. I'm not denying that one bit. In many ways it may have backfired on the tobacco industry.

Q. Okay.

A. All of these, by the way that you've pointed out to me so far have been published in 1972 or later. And as this states here, the project ended in 1973. That's about when the money ended probably, about 1972.

Q. Actually, I can find lots published earlier. I turned to a page, turned to Page 299. I can turn to lots of different pages with things that were published earlier.

Look at Mouth Absorption of Various Compounds in Cigarette Smoke. That was published in the Archives of Environmental Health, 1968, right?

A. Uh-huh, I see that.

Q. I'll just do one more. Let's go to 345. Biological Effects of Cigarette Smoking and the Pathogenesis of Pulmonary Disease, published in the Journal of Occupational Medicine in 1973.

A. Yeah, I see that.

Q. So what you're saying is, whatever the

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motives of the tobacco companies were, you agree that a lot of this work contributed substantially to the scientific knowledge about smoking and health?

A. Oh, I think a number of the research projects did, yes.

Q. Okay. Thank you, Mr. Solberg.

THE COURT: Redirect?

MR. HEIM: I think Mr. Moodhe may have a few questions.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. MOODHE:

Q. Good afternoon, Mr. Solberg. My name is Joe Moodhe. I represent the Council for Tobacco Research. I don't think we've met before.

Mr. Solberg, if I can just start at the back for a minute, on the question of independence. You mentioned that there were two members of CTR's Scientific Advisory Board who also served as members of the AMA-ERF advisory committee, correct?

A. That's correct.

Q. You don't think that that joint or dual membership alone itself is improper, do you?

A. No, not in and of itself. I don't think that's improper. I think it's improper to pretend to

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be independent from a funding source when you still are working for that funding source.

Q. But just the dual membership is not a matter of impropriety; what you're concerned about is the notion or the representation that they were somehow independent?

A. That's correct. If those two people wanted to serve those two committees, I'm not saying that that necessarily is improper; I'm saying that their identification of the project as being independent from its funding source was not proper and was misrepresented to the people.

Q. The funding source was the tobacco companies, was it not?

A. That's right.

Q. CTR itself did not contribute any money to the AMA-ERF, did it?

A. That's a good question. I think that the money all comes from the same spot. Six tobacco companies funded AMA-ERF, and it was either five or six tobacco companies that fund the Council for Tobacco Research. So what's your point?

Q. But the money didn't come from CTR itself? No money went from CTR to the AMA-ERF, right?

A. You're saying out of their checking account?

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Q. Correct.
A. It all originates from the same spot, though.
Q. I understand that, came from the tobacco companies. Both entities receive their money from the tobacco companies, right?
A. Correct.
Q. Now, the members we're talking about here, I think it's Dr. Bing and Dr. Cotan?
A. Correct.
Q. They are not employees of the Council for Tobacco Research, are they?
A. No, they served on the Scientific Advisory Board, and I would categorize them as consultants.
Q. They're advisers to CTR on how to award their grants, correct?
A. That is correct.
Q. And they were affiliated with academic institutions in the United States; is that correct?
A. That's correct. And in fact, both of them received huge amounts of money from the Council for Tobacco Research.
Q. We're not talking about the Council for Tobacco Research now, we're talking about the AMA-ERF.
A. Okay.
Q. These gentlemen were not employees; they were

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independent academic investigators, correct?
A. Again, there's that word "independent" that keeps coming up from the tobacco industry, and I have a real problem with it, as I've stated.
Q. Okay. You don't question the scientific credentials of either Dr. Bing or Dr. Cotan, do you?
A. Do I question their scientific --
Q. Credentials.
A. No, not their credentials.
Q. Or the value of the research they did?
A. Do I question the research they did?
Q. Right.
A. For Dr. Cotan -- no, I don't question the research they did.
Q. Now, Dr. Cotan at the time he was serving on the AMA-ERF and CTR SAB, he was employed by the United States Public Health Service at the National Cancer Institute, wasn't it?
A. For a portion of that.
Q. But at that time, for a portion of time he was an employee of United States Public Health Service at the National Cancer Institute?
A. That's correct.
Q. Does that make the National Cancer Institute not independent of the AMA-ERF?

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A. That's a great question. I'm glad you asked it. In fact, the National Cancer Institute was running a program that was directed by Gio Gori, who basically they were trying to find a safer cigarette. Everything gets worded a little differently, but essentially it was trying to find the harmful elements in tobacco smoke and see if they could be removed.

So, as President Carter said later in his years, we could make it safer than it ever was. This is a bunch of mumbo jumbo. But I think that the National Cancer Institute, under the direction of Gio Gori with that project, I have real concerns about that.

Q. Well, my question is, under your view of independent, as you've described it here to the jury, was the NCI not independent of AMA-ERF during the time that Dr. Cotan was an employee at NCI and an employee or consultant at the AMA-ERF?

A. No, I think that was -- certainly has to be independent, because the Congress decides literally where the National Cancer Institute money goes.

Now you could argue that the -- you know, millions of dollars in lobbying that is spent by a special interest group like the tobacco industry would have an influence on the Congressional committee that

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appropriates that money.

Q. The National Cancer Institute awards grants, doesn't it?

A. Yes, it does.

Q. That's not decided by Congress, is it?

A. Technically speaking, no. But Congress -- members of Congress have had influence on the grants that are awarded, and in some cases have been discontinued.

Q. So is it your testimony that Congress has corrupted the NCI process as well?

A. It's my testimony that certain members of Congress have been -- have publicly made statements about the NCI and its projects and what they should and should not do.

Q. Okay. Well, regardless of whether these gentlemen were or were not, quote, independent, under your definition, your view still is that the research that was funded by the AMA-ERF was very relevant I think is the phrase you've used in your deposition, to investigating smoking and health issues? Correct?

A. That's a good general way of looking at it, but it was not -- it did not pursue the course that was set out by their goals and objectives, which was, you know, to find a less hazardous cigarette.

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Q. That was just one goal. There were other goals expressed.

A. Well, that was the primary goal stated in JAMA and other newspapers, and so on and so forth.

Q. Didn't the resolution itself identify several goals, including investigating the relationship of smoking to disease, identifying the constituents, and if possible, removing them?

A. Right.

Q. The harmful constituents?

A. Right.

Q. So there were several goals?

A. I guess you could say there were two or three.

Q. You mentioned in your direct testimony, I believe, that Congress first considered putting warnings on cigarettes about 1957; is that right?

A. I believe so, yes.

Q. Do you know what the AMA's position at that time was or if they took a position?

A. They didn't take a position.

Q. Do you know what the AMA's position in 1959 was, vis-a-vis whether the evidence, scientific evidence, had established that smoking caused lung cancer?

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A. Their official position?
Q. Yes.
A. Was that it had not.
Q. Had not?
A. Correct.
Q. And that was in 1959.
Now, during that period of time that we're talking about, the AMA was not accepting any money from the tobacco industry for advertising in JAMA, correct?
A. At what time period, 1959?
Q. 1959.
A. That's correct, they were not.
Q. And we were some years away yet from the contribution that the tobacco industry made to the Educational Research Foundation, correct?
A. Yes, but there's at least -- there's one memo from 1959 that states that some effort was being made by the tobacco industry to work with the AMA on this issue.
Q. And that memo, which I think it was a memorandum written by Dr. Little --
A. That's right.
Q. What that memo concluded was that the AMA didn't have any mechanism in place for running a research program that the tobacco industry might be

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interested in contributing funds to? I feel which is very interesting, because the AMA-ERF was already in existence at that point.

So, for them to make that statement, then, and later to say: Gee, here is a mechanism of the AMA-ERF -- see, I think we're missing part of the picture here, which is they wanted the AMA to have something specific where they could conduct research, and they didn't.

So, in November of 1963, they created something. It was called the Biomedical Research Institute at the AMA. And they brought in a director to oversee the money that would come in from the tobacco industry. And when that director said I'm not going to deal with this project because I have problems with it, they had to find their second choice, which was the AMA-ERF.

Q. At the time in 1959, the ERF wasn't conducting any research, was it?

A. Conducting research? I've never stated in my testimony that they conducted research. I said that their role has always been to hand out grants to do research.

Q. Were they handing out grants in '59?

A. Some of the money for the AMA-ERF went to

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their own chemical laboratory.

Q. But they were not funding outside institutions to conduct research?

A. At that time, no, I do not believe they were.

Q. Now, in fact, chronologically what happened was that in late 1963 the AMA decided to allocate $500,000 to the Educational Research Foundation in order to conduct research on smoking and health issues, correct?

A. Well, yeah, but you've jumped from 1959 to December of 1963, and you're giving the jury a very scant picture. You're almost suggesting that the AMA didn't deal with this issue for four years, which is not true.

In fact, in 1960, they were authorized by the House of Delegates -- at that time the AMA had something called the Council on Drugs. They were authorized at that time by the House of Delegates, which is the way things are supposed to work there at the AMA, to use the Council on Drugs at the AMA to study the smoking and health issue.

They did not do it. Even though the House of Delegates voted to do it, the Council on Drugs didn't do it. They didn't fulfill their obligation.

Then, in 1961, Senator Noreen Newberger from,

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I believe, the State of Oregon asked the AMA specifically to get involved in this effort; and again they declined to get involved in this effort.

It wasn't -- and even again in 1963, at their annual meeting in June when they were asked to get involved by some of the delegates then, they didn't get involved. And they said, in fact, we're going to wait until the Surgeon General's Report comes out in '64.

Q. Okay.

A. So I think that's a little more accurate depiction of the history between '59 and 1963.

Q. You've referred to the various actions that the AMA and the House of Delegates have taken during this time period, correct?

A. Correct.

Q. You're aware that the AMA prepares digests of these resolutions and meetings and actions of the house, correct?

A. I'm sorry, prepare --

Q. Digests, summarize --

A. Volumes of these -- yes.

Q. Have you ever looked at any of those?

A. Yes.

Q. I'm going to ask the court reporter or court to mark as Defendants' Exhibit -- gee, I don't know

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what letter we're up to. This is not preidentified.

THE CLERK: It will be for ID?

MR. MOODHE: For identification.

THE CLERK: Defendants' Exhibit U for identification.

(Defendant's Exhibit U was marked for identification.)

BY MR. MOODHE:

Q. Now, Mr. Solberg, the front page of this document identifies Ernest B. Howard. I believe you earlier testified that Mr. Howard or Dr. Howard, I should say, is an executive at the AMA during this time period, correct?

A. Yes, he would have been an assistant executive vice president from '59 until '65, I believe. And then the executive vice president from there until '68.

Q. Now, you recognize this Defendants' Exhibit U as a digest of official actions put out by the American Medical Association covering the period 1959 through 1968, correct?

A. Yes, that's what it says on the cover.

Q. Okay. And this is an extract of it. On Page 373 of this digest, which is included as part of Defendants' Exhibit U, it includes a summary of various

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actions that were taken by the AMA during this period of time on matters relating to tobacco, correct?

A. That's correct, yes.

Q. Now, in June 1961, Defendants' Exhibit U indicates that the house -- referring to the House of Delegates, correct?

A. That's correct.

Q. -- concurred that a research project by the AMA to review the relationship of tobacco to disease is not to be desired in view of the programs already being undertaken by other national research institutions.

A. Where are you reading from?

Q. I'm sorry. Second item, "research project." See that?

A. Yes, I see that.

Q. Are you up with me now?

A. Yes, sorry.

Q. And this was not to be construed as either approval or disapproval of the conclusions announced by other organizations, agencies or individuals.

I read that correctly?

A. You read that correctly, yes.

Q. The document also indicates that in November 1962, on being informed that the Council on Drugs -- which I believe is the council you were just referring

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to, correct --

A. Uh-huh.

Q. -- was conducting a study of the relationship between tobacco and disease, the House -- again the House of Delegates -- took no action on Resolution 43, which advocated that the AMA prepare a statement for release to the public concerning the public hazards of cigarette smoking. Correct?

A. I see that, yes. That's consistent with what I said. They didn't have a public -- they never made a statement public.

Q. And this is in November -- I should say June and November 1962, correct?

A. Yes, according to the dates here.

Q. That's during this -- it's during this intermediate period where the journal is not getting any funding and the tobacco industry hasn't contributed any funding to ERF, correct?

A. That is correct.

Q. It then comes to describe, I believe, the meeting in June 1963, correct, the annual meeting?

A. Yes.

Q. And in this digest this describes action by the House of Delegates adopting the report on the subject of tobacco and health, correct?

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A. They're adopting a report related to this report in Resolutions Number 24 and 25, which reads as follows -- is that where you are?

Q. Yes.

A. Okay.

Q. In the middle of that following paragraph, it states: A continuing study -- I should go back and read the entire paragraph.

"Your committee is in accord with the opinions expressed by the board of trustees in Supplementary Report O, and with the intent of Resolutions Numbers 24 and 45, but because of the stature of the American Medical Association, it cannot incriminate a single factor as an etiological agent in disease without complete documentation.

"A continuing study of this important subject is mandatory, and the report of the study committee of the U.S. Public Health Service should be received before conclusive statements regarding the hazards of the use of tobacco be endorsed by this House of Delegates."

Did I read that correctly?

A. I see that, yes. They're responding to two resolutions that were presented at that time, which I stated in the June 1963 meeting to formalize an

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opinion, a policy of that organization on this very issue. And they're saying: Wait until the Surgeon General's Report comes out.

Q. Before you make any conclusive findings by the House of Delegates, correct?

A. That would be a policy, yes, by the House of Delegates.

Q. Then in December 1963, the announcement -- there is a description in the announcement of the creation of the ERF program to study tobacco and health, correct?

A. You're on a different page now?

Q. Yes, next page.

A. Yes, I see that.

Q. And it says: Contributions -- the last line of that report says: Contributions will be accepted only if they are given without restrictions, correct?

A. Yes, I see that.

Q. In fact, when the tobacco industry donated the 10 million dollars, it didn't give any restrictions other than that the money be devoted to research on smoking and health; is that correct?

A. Right. And that was an important policy or statement for the industry to make, because they could always point, when someone said, what are you doing

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about this problem, and say, we are funding more research.

At what point do you no longer say: No more research is needed? Today they're standing up before Congress and saying, we swear to God that smoking can't even cause a cough. It's ridiculous.

Q. I'm just going to digress --

MR. HEIM: Move to strike that last answer. It's nonresponsive.

THE COURT: Overruled.

BY MR. MOODHE:

Q. I'm going to digress from this document for a moment and just talk about the chronology for a second on the FTC position on the AMA.

A. Okay.

Q. It was in early 1964, after the contribution had been made by the industry that the AMA sent its letter to the FTC, right?

A. That is correct.

Q. And your testimony during cross examination, I believe, was that there was at least some question raised about the authority of Dr. Blasingame to send that letter, correct?

A. That's correct. Yes.

Q. Now, if we go to Exhibit 5495 in evidence --

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I don't know if you have that --

THE CLERK: Here you go. (Handing)

Q. On the second page I believe Mr. Heim had directed your attention to the entries in the chronology here reporting that Congressman Thompson had raised the specter in March 1964 that the AMA's position on the warnings was the product of a deal relating to the contributions the industry made?

A. Yeah, the word deal is in quotes, so I assume that's the word he used. That was actually published in daily newspapers at the time as well.

Q. And I think you've indicated that obviously this whole controversy about the letter going to the FTC was a matter of public record, including with the membership?

A. Yeah. I mean, it's reported here in JAMA, so it was made public record at some point.

Q. Now, the next entry which is dated March 24, 1964, is the one where the AMA protests the outrageously slanderous implications of this charge, correct?

A. March 20, 1964, yes.

Q. So, in the official organization of the American Medical Association, when the AMA had the opportunity to renounce what Dr. Blasingame had done in

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writing the letter, they didn't renounce; instead, they backed him up, didn't they?

A. You're talking about the March 20th comment here?

Q. That's correct.

A. It's not attributed to anyone.

Q. It's attributed to the AMA, isn't it?

A. But read the newspaper articles. Who is it attributed to in the newspaper articles? Dr. Blasingame himself, in one newspaper article, in the New York Times -- this is just a synopsis. You're looking at a one-sentence synopsis printed in its own medical journal.

Q. By the AMA, correct?

A. That's what it says here.

Q. So this is a statement by the AMA that the AMA protested Representative Thompson's charge, correct?

A. That's what it states here, yes.

Q. So the AMA did not say what Dr. Blasingame had done was not authorized, did it?

A. No. They reacted by introducing 12 resolutions in June of 1964 to endorse the Surgeon General's Report.

Q. And what happened to those resolutions?

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A. They didn't get out of committee.
Q. Did the House of Delegates ever consider whether to endorse the Surgeon General's Report?
A. The House of Delegates did not. What they did was they took bits of pieces of the resolutions, they lumped them into one policy statement, it was introduced on the floor, and that's what was voted upon.
Q. Let's go back --
A. It was basically a watered down version.
Q. Let's go back to Defendants' Exhibit U for a moment, if you would, Page 375. Okay. With me now?
A. Yes, sir.
Q. Would you read to the jury the entry in the middle of the page under the caption: Surgeon General's Report on Smoking and Health?
A. Where it says, Surgeon General's Report on Smoking and Health?
Q. Yes.
A. It says: The House of Delegates did not adopt Resolution 55 proposing endorsement on the Surgeon General's Report on Smoking and Health. June 1965.
Q. So in fact --
A. But there were 12 resolutions that were

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introduced, is what I'm saying. All of them were lumped together in one resolution.

Q. The House of Delegates which you testified is composed of the representatives from the various states and medical organizations, voted in June 1965 not to endorse the 1964 Surgeon General's Report, didn't they?

A. According to the way this is written by Dr. Howard, who was the executive vice president at the time at the AMA that they were receiving money from the industry, I'll say that's what it says.

Q. Did you dispute the accuracy of this digest?

A. I think -- yeah, I'm disputing it because why doesn't it say that 12 resolutions were introduced?

Q. That's 1964, right?

A. Right, in June of '65.

Q. June of '65 --

A. So let's look at June of 1964. Go up right above it, and what does it say?

It did absolutely nothing. In fact, it doesn't even mention -- the only thing it says is smoking facts you should know, which is what they prepared for public distribution; when I mentioned earlier that was their response to the Surgeon General's Report which warned people that fires caused by cigarette smoking could, you know, burn you or

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suffocate you.

Q. Well, the text of the June '64 resolution, while it doesn't endorse the Surgeon General's Report, does make a comment about the deleterious effects of tobacco on human health and indicated that extensive human research is necessary, correct?

A. Where are you reading from?

Q. Paragraph 4.

A. And your question was what? I'm just having --

Q. In June 1964, this is a resolution adopted by the House of Delegates, right?

A. Tell me where you're reading, exactly.

Q. I'm sorry. Just so we can be clear, on the preceding page, it says: Tobacco and Health; right?

A. On the preceding page?

Q. Right.

A. Which would be Page 374.

Q. You see Tobacco and Health?

A. Yes, I see that.

Q. It says: The House of Delegates adopted the following statement between the relationship between cigarette smoking and the incidence of lung cancer and certain other diseases; correct?

That's the introduction, right?

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A. It says: The House of Delegates adopted the following amended proposal?

Q. No, it says, "following statement."

A. Oh, you're in the middle of the page.

Q. Right.

A. I was at the top of the page. It says Tobacco and Health in both spots.

Q. "Adopted the following statement regarding the relationship between cigarette smoking and the incidence of lung cancer and certain other diseases." Correct?

A. Correct. I see that.

Q. That's, by the way, what the subject matter of the Surgeon General's Report was, correct?

A. The relationship between cigarette smoking and the incidence of lung cancer.

Q. That's what the Surgeon General's report discussed, right?

A. It discussed the causal relationship between cigarette smoking and lung cancer in males.

Q. Okay. And then the full text of that resolution adopted by the House of Delegates is then set forth on that page and the next page, correct?

A. Yes.

Q. Okay. None of those particular resolutions

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adopt the viewpoint that the Surgeon General's conclusion was correct; is that fair?

A. Well, there's only one resolution here. Is that what you're saying?

Q. Four paragraphs.

A. The four paragraphs in that resolution do not adopt what the Surgeon General's Report was saying, that is correct.

Q. And at the time the house adopted this in June 1964, there was already substantial controversy, as you've testified, about the AMA's position on warnings, correct?

A. That's correct, when this occurred, that is correct.

Q. And the Surgeon General's Report had been given wide publicity, correct?

A. Yes, the Surgeon General's Report received wide publicity.

Q. But in adopting this resolution, the House of Delegates did not see fit to renounce the AMA's position on warnings, did it?

A. No, sir. That's not how resolutions are introduced, and you know that. They're introduced in committees.

Q. And they can be devoted --

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A. And there were 12 resolutions that were introduced in June of 1964, which is what we are talking about now that wanted the AMA to endorse -- you never have 12 out of 72 resolutions -- that's almost unheard of. That's like having a unanimous decision to embrace the American flag, which can barely happen in any state legislature.

12 out of 72 resolutions in '64 asked the AMA House of Delegates to adopt the conclusion of the 1964 Surgeon General's Report. They did not get out of committee. They lumped them together, and this is what you get.

Q. The House of Delegates did not adopt a resolution endorsing the Surgeon General's Report in 1964, notwithstanding the fact that the membership was fully advised of the controversy surrounding this issue. Is that fair?

A. Fully -- the membership was fully advised of the conclusions that were very specific in the Surgeon General's Report, not the controversy. You're trying to build a controversy around this, and I'm not stating that.

Q. In any event --

THE COURT: Can I see counsel sidebar?

MR. MOODHE: I have one further question,

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Your Honor, and I'll be finished.

THE COURT: One more question, all right.

MR. MOODHE: One more question.

BY MR. MOODHE:

Q. In any event, in June 1965, at next year's annual meeting, when the House of Delegates had an opportunity to correctly endorse the conclusions of the Surgeon General's Report, they voted not to do so, correct?

A. According to this document, that is correct, and that would be 10 million dollars into an 18 million dollar project.

Q. The House of Delegates did that, though; not just the leadership of the AMA?

A. Again, the House of Delegates do not introduce resolutions. They're introduced in committee and referred.

Q. But they do vote on them?

A. By leadership.

Q. They do vote on them?

A. They vote on what?

Q. Resolutions.

A. If that appointed person for that committee decides that that resolution is voted on, that's how they get voted on.

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MR. MOODHE: Thank you.
THE COURT: Do you have anything?
(The following proceedings were had at sidebar:)
THE COURT: Do you have any direct or redirect?
MR. ROSENBLATT: Yes, and how long --
THE COURT: You can finish him up, but depends on --
MR. ROSENBLATT: I've got around a half hour. But with the objections, sidebar --
THE COURT: I don't want him to come back tomorrow. I'd just as soon finish him up. But this is wonderful, all this academic discussion that we're having, so somebody someplace can read 50,000 pages of documents with the jury looking at you guys like you're all a bunch of nuts.
I mean, I don't understand it, but it's your case. You do what you want with it.
Go ahead. Finish him up.
(The sidebar conference was concluded, and the following proceedings were held in open court:)
THE COURT: Okay. We've been discussing the scheduling situation, and counsel indicates that he has about another half hour or so, and I would really like

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to complete this witness's testimony today. It may be a little longer than we thought.

All right.

REDIRECT EXAMINATION

BY MR. ROSENBLATT:

Q. The concept of present -- yes, Olga, if you have that stack.

MR. ROSENBLATT: Don't worry, I'm not going to ask you about all of these.

Q. Early in his cross examination, Mr. Heim asked you some questions about the concept of present mindedness, which I don't know that I had ever heard before, but then he explained it. It's got something to do with the context of the times.

A. That's correct. Yes.

Q. And obviously, when you're looking at ads, and he went through ads not only of tobacco but of other kinds of products, and obviously the kinds of ads, the level of knowledge, you know, differs from decade to decade, correct?

A. Yes. I would agree with that.

Q. Okay. Now you're somewhat of a historian, and the tobacco industry, you would agree, certainly since World War I, has very much been a part of American culture, correct?

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A. Yes, sir.
Q. Okay.
A. In fact, even before that. But yes.
Q. Even before. Okay. Now, in terms of context, big picture, the big event of the 1930s was probably the Depression.
The big event of the 1940s was World War II, and you had the Korean War.
A. 1950s.
Q. You had Vietnam. And if you look in terms of putting it in context of sports, and in many of these ads there are sports figures, there are entertainment figures, starting in the 1920s and '30s with Babe Ruth, Joe DiMaggio, Ted Williams, Stan Musial, you get later, talking about people like --
MR. KIRBY: Your Honor, I object. Counsel is testifying.
THE COURT: Laying a predicate and foundation. Overruled.
BY MR. ROSENBLATT:
Q. You get to people like Sandy Koufax, Mickey Mantle and Roger Maris. So we put those decades -- you studied those ads until 1970. That's been the focus.
Now, whatever you want to say about the context, if you're looking at ads from the '30s, '40s,

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'50s and '60s, irrespective of context, one of the things that is absolutely consistent in all of the tobacco ads during those decades is none of them have a warning, is that correct, a warning such as saying cigarette smoking causes cancer?

A. That's very --

MR. MOSS: Excuse me for a moment. Your Honor, this is absolutely -- this is direct examination, Your Honor. It's not a time to sum up.

THE COURT: Are you finished?

MR. MOSS: Yes, sir.

THE COURT: You're right, it is leading. It's also repetitious. We've been through this on direct.

MR. MOSS: That's what Mr. Kirby was telling me to say, repetitious, but I figured I've said enough.

MR. KIRBY: Don't blame it on me, or it will be overruled.

THE COURT: Okay. We've been through this, counsel.

MR. ROSENBLATT: We've been through it in great labor during cross examination.

THE COURT: No, it was during direct, when you asked the question. Suffice it to say there's no warning labels, okay?

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MR. ROSENBLATT: Okay.
BY MR. ROSENBLATT:
Q. So in terms -- in spite of the context, there are certain consistencies in all these decades, correct?
A. Yes.
Q. In terms of --
A. Yes.
Q. Okay. Now, also in terms of when you look at the overall ads, '30s, '40s, '50s, '60s, as a generalization, the people presented in the ads, whether they're beautiful movie actresses or great athletes, are any unhealthy people ever presented in any of these ads that you've looked at from the '30s, '40s; sick people? Or are they happy smoking and healthy looking and young?
A. I think it would be crazy to try to sell the product with sick people, because it would be an admission that it causes something. At least sickness, if you don't want to call it specific -- specifically cancer or whatever. But I think when I testified earlier, I don't remember whether it was in direct or cross, about the themes and the categories and how I would categorize certain ads, the themes, no question, from really the 1920s until the mid 1950s was health

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claims in cigarette advertising.

So it wasn't just that they didn't have a warning on them; it was that they were saying this brand is better than this brand because it's less irritating to the nose and throat. Or, you know, this brand is easy on your throat. So on and so forth.

MR. MOSS: Your Honor, I object and move to strike. Number one, it's repetitious. Number two, it's outside the scope of this man's expertise.

THE COURT: No. Disagree with you. Overruled.

BY MR. ROSENBLATT:

Q. Now, Mr. Heim also in one of his questions, was making the point that, depending upon what we read, we -- it would be hard to figure out how the United States did during World War II. Now, no matter what you read about World War II, one factor is known, America won World War II; Nazi Germany lost?

A. That's correct.

Q. Is that a debatable issue? If somebody said I don't think America -- did America win World War II, you would look at them like they were crazy, wouldn't you?

A. I would look at them like they were crazy, yes.

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Q. Now, there may be a debate about how the Korean or Vietnam war turned out in terms of victory.

A. I was going to add that.

Q. But in terms of World War II would you agree that's a clear-cut, noncontroversial, nondebatable issue?

A. That's correct. That's the way I look at this.

Q. Now, you're a sports expert, and this is a America, and everyone is entitled to their opinion. But if somebody told you, I don't think Michael Jordan is really such a hot basketball player, well, they don't know anything about basketball, if they express that opinion, correct?

A. I would agree with that statement.

Q. Now, you were asked questions about the other side, the other side of the coin, and documents that you've looked at. What efforts have you directly made in terms of asking the officials of the American Medical Association to give you -- provide you with information, to provide you with documents about their side of the story relative to their relationship with the tobacco industry during the 1960s?

A. What efforts have I made to get information from the American Medical Association?

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Q. Correct.

A. We have asked them, and they have been asked publicly on television, which was a piece done June 10th, 1997, NBC Dateline, based on my research. And they declined to share information. They did make a statement. The statement was: We were duped by the tobacco industry --

MR. HEIM: Objection, Your Honor. This is hearsay. Hearsay.

THE COURT: Well, the statement is being made in context of the fact it was said, not for the truth of the matter asserted. So I will overrule that objection.

BY MR. ROSENBLATT:

Q. That was a statement made on national television by --

A. On national television by Lonnie Bristow, who was either president of the AMA or chairman of the board of trustees, I forget which one, because he's been both in this decade. That was his statement to the American people on public television, is that we were duped by the tobacco industry.

MR. HEIM: Your Honor, I object to this.

THE COURT: I am instructing the jury that the statement being made -- in essence, the reason it's

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being allowed is that the statement is not being presented for the truth of the matter asserted, but merely the fact that there was a statement.

BY MR. ROSENBLATT:

Q. And that national television program, Dateline on NBC, was aired when, approximately?

A. On June 10 of 1997, which was a Tuesday evening. Now, I believe it was seven p.m. central time.

Q. Do you need to be a Monday morning quarterback to conclude that the American Medical Association in the 1960s was in bed with the tobacco industry?

MR. MOSS: Objection.

MS. LUTHER: Objection.

MR. KIRBY: Objection, Your Honor.

MR. ROSENBLATT: That's in direct response to cross, Your Honor.

THE COURT: Well, the manner in which it's used, I'll sustain.

Let's rephrase.

BY MR. ROSENBLATT:

Q. What causes you to conclude -- and it was an expression you used on cross examination -- that the American Medical Association was in bed with the

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tobacco industry?

MR. MOSS: Which we object, Your Honor, for the same basis. Number one, it is outside the --

THE COURT: This is an issue that was raised on cross and discussed on cross. Overruled.

MR. MOSS: It was an issue, Your Honor, that was --

THE COURT: I said overruled.

Let's proceed.

A. If I remember the context in which that was asked in cross examination, that phrase was used to describe not only the internal memos and documents. I said if you took all of those things away and you simply read the public reports that were published in JAMA itself, the Journal, in other medical journals, in Advertising Age, the New York Times, the Wall Street Journal, several other secondary sources that reported on it at the time it was happening, I would make that conclusion based on what was available even just publicly.

Q. Based on your work with Doctors Ought to Care, your position as the executive director, all the research you've talked about, when did Eric Solberg reach the conclusion that there was an unsavory relationship that you've testified to today between the

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American Medical Association and the tobacco industry which impacted the AMA's public assistance on tobacco and health issues? When did you reach that conclusion?

MR. MOSS: Objection, Your Honor.

THE COURT: Overrule the objection.

A. First I would say that the -- coming to that conclusion has been a painful part of my life. I have been removed from committees that I served on, I have been -- I've lost friends over this. And so it was not an easy conclusion to come to.

And I think shortly -- I would say probably about a year into my research, which would have brought me to the end of '92 or early 1993, when I had a large part of the information, I didn't have necessarily all of my interviews conducted at that point, but I had a number of the -- certainly I had all of the public reports already and we already had a lot of the documentation in the archive at least since 1987 -- I guess to answer your question, when I first arrived at DOC, I was number one, and when I first got involved in this issue almost ten years ago, number one, I was amazed that cigarette ads ever appeared in medical journals. But that would be present mindedness. So I had to look at the context and got over that. And I got over my initial amazement and looked at it

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academically.

Then, secondly, I was once again amazed that the American Medical Association had a joint project with the tobacco industry.

But I investigated it further. I didn't just leave it there, and I've tried to contact -- and am still working on this project.

Q. So you basically reached the conclusions you've expressed today around 1992, '93?

A. Yes.

Q. Okay. Mr. Heim mentioned this money you got from an attorney who I do not know named Scruggs. What is his first name?

A. Richard Scruggs.

Q. Located where?

A. In Mississippi. I'm not sure which city.

Q. And Scruggs made a contribution to Doctors Ought to Care, in what year?

A. 19 -- well, it may have covered more than -- it would have been '96 and '97 we got part of the contribution in 1996, and then we got like every month we got a little bit more -- not every month, but every other month we got a little bit of money.

Q. So three or four years after you reached the conclusions you've testified to today?

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A. Yeah, that would be correct.
Q. As far as you know, has Mr. Scruggs ever sued the AMA or had a particular interest in the relationship between the AMA and the tobacco industry?
A. Not to my knowledge, no.
Q. Now, you were asked a question about whether you had personal knowledge of whether any of the many thousands of class members in the State of Florida who are members of this class action ever saw one of these ads.

Now, to your knowledge, during the timespan we're talking about, the '30s, '40s, '50s, and '60s, did Time magazine, Life magazine, Saturday Evening Post, are those national magazines?
A. Yes, those are national magazines.
Q. Distributed in Florida, like every other state?
A. That's correct.
Q. What was the ultimate conclusion of this tobacco and health compiled by the AMA-ERF committee?
A. I'm going to look for it so I can read it specifically rather than try to paraphrase it, since I still have it sitting here in front of me.
Q. Or if you can paraphrase it, just the basic conclusion.

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A. Essentially, the statement was made that nothing -- in fact, it would go beyond just simply looking at this, because there was a small announcement in JAMA at roughly the same time basically that this -- all of this research did nothing to alter the conclusions of the 1964 Surgeon General's Report.

In other words, they finally, in 1978, said that the 1964 Surgeon General's Report had hit it on the spot.

Q. Go to the preface page, please. That's like Roman Numeral IX, you know, very early, a few pages into it.

A. Yes.

Q. Okay. Last paragraph: The American Medical Association and its Education and Research Foundation wish to express its gratitude to the tobacco industry for its financial support.

And is it that financial support of several million dollars which causes you to question their objectivity?

A. That's what I testified to earlier.

Q. And on the very next page we've heard about six tobacco companies, but they are actually listed on the very next page as contributors.

Could you simply name them?

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A. American Brands, Brown & Williamson, Liggett Group, Lorillard, Philip Morris, and RJ Reynolds. But they also thank the Council for Tobacco Research earlier, I think in some of these early pages here.

Q. Well, I was going to ask you, if you go a couple of pages to Roman Numeral XIII, the title of which is, Statement, AMA-ERF Committee for Research on Tobacco and Health, the next to last paragraph. Are you with me?

A. Yes, I see it.

Q. "Throughout its life, the committee maintained liaison with the National Institutes of Health and the Council for Tobacco Research USA, keeping these organizations apprised of current trends in the committee's work and to minimize duplication of effort.

"The committee is grateful for the free exchange, the information and the close liaison which was established with these organizations."

Does your research confirm that there was, in fact, a very close relationship between the AMA-ERF and the Council for Tobacco Research?

A. That's what I testified in cross examination.

Q. You were asked some questions about Plaintiffs' Exhibit Number 5495.

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A. Yes, I have that.

Q. Now, in the second column, about halfway down, where it says: At the FTC hearings of cigarette labeling, Representative Frank Thompson, Junior, a democrat from New Jersey, accused the AMA of siding with the tobacco industry as part of a deal to get tobacco state congressmen to vote against the administration's proposal for a King-Anderson bill for hospital care for the aging under social security. Dr. Blasingame termed this charge, quote, an unjustified assault on the integrity of the officials of the AMA and upon your colleagues in Congress, end quote.

If I've understood your testimony correctly today, you're basically making the same charge as this Congressman made well over 20 years ago.

A. Having seen a lot more information.

Q. Does it surprise you that Dr. Blasingame denied it?

MR. MOSS: Objection, Your Honor.

A. No, it doesn't surprise me at all.

THE COURT: I'm not sure of the foundation for that question. I sustain the objection.

MR. MOSS: Can we instruct the jury?

THE COURT: The jury will disregard.

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BY MR. ROSENBLATT:

Q. And in this exhibit it says that on February 7 of 1964, the AMA-ERF accepts the 10 million dollars from the six tobacco companies, and on February 28th they gave the testimony to the FTC on the subject of labeling and advertising regulations for cigarettes.

A. That's correct.

Q. Now, in the very last column, in terms of this chronology which appears in JAMA, April 6, 1964, March 23, 1964 -- and by the way, where would -- as a historian on the subject of cigarette smoking, and in terms of physicians who have performed a service to the American people and to the public health community, where would Alton Ochsner be rated?

A. Dr. Ochsner would be rated extremely high based on the number of citations. There is a thing in medical literature called a citation index. That's where you can count literally how many times a person has been cited. He is one of the most cited people in the industry of smoking and health research.

Q. It says: In 1964 Alton Ochsner M.D., emeritus professor of surgery at Tulane University, charges AMA is derelict in its duty for failing to support the FTC proposal. "Doctors should take the lead." He said, "This is a health problem.

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Personally, I think the AMA is wrong in conducting more research. I think we have the answers right now."

And did the 1964 Surgeon General's Report on the issue of whether cigarette smoking causes lung cancer in men, did they need any more research; or were they satisfied that that was a conclusion that they could tell with confidence to the American people?

A. That was the primary conclusion of the report, and that's what they all decided to be said to the American people.

Q. And a few questions about Dr. Blasingame's letter of February 28th to the American Medical Association, on the first page --

A. I don't have that.

Q. That's Plaintiffs' Exhibit 5488. You have it?

A. I don't have that one. It's on top there.

THE CLERK: (Handing)

Q. Second paragraph: At the outset we should like to state that the AMA has historically endorsed and promoted federal and state legislation containing labeling requirements with respect to the sale of drugs, cosmetics and hazardous household products to consumers.

And then you go down to the last paragraph on

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Page 1 where he says: With respect to cigarettes, cautionary labeling cannot -- cannot be anticipated to serve the public interest with any particular degree of success.

And go to Page 2. The last sentence in the second paragraph on Page 2, after a while -- where he says in his letter to the FTC: After a while, the habitual smoker ignores the cautions expressed on the label.

Is that considered to be an accurate statement?

A. That sentence there would be an accurate statement, yes.

Q. And prior to February 28th, 1964, after the tobacco industry had received -- after the AMA had received the 10 million dollars from the tobacco industry, prior to that time, had they ever taken an official position against warning labels?

A. No, not on cigarette packages, no.

MR. ROSENBLATT: Thank you very much.

THE COURT: You may step down, sir. Thank you.

Okay. We will resume tomorrow.

MR. MOSS: Can we come sidebar?

THE COURT: I guess we're going to have a

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little conversation about tomorrow's schedule. Hold on a second.

(The following proceedings were had at sidebar:)

THE COURT: I've been looking at the ones we have to talk about, Cahan and Williams and Brookes. I've been looking through the depositions of Cahan and Brookes, and almost everything is objected to, which means that I've got to figure out the reasons why, what's going on. It's a long, hard, very tedious process, trying to get inside your heads and figure out, gee, it looks pretty good to me, what are you objecting to.

MR. HEIM: Cahan, particularly.

THE COURT: There is a lot of repetition alleged on the basis -- a lot of stuff to talk about. As far as Williams is concerned, there's a lot of stuff we have to talk about here, too. So, what I think I'll do, we'll take the morning for us, and bring them back at around 1:00.

MR. SCHNEIDER: Your Honor, a couple things. With respect to Mr. Brookes, I think the first half of the deposition is pretty easy. There is a back section that's a privilege section.

THE COURT: There's a whole bunch of

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references to documents.

MR. SCHNEIDER: Right. That's a problem. We may be able to get through the first part of it fairly easily.

THE COURT: What I started doing, looking through the documents which I assumed are privileged.

MR. SCHNEIDER: Your Honor, from 137 forward is at issue.

With respect to Williams, I still don't know whether or not Williams is going to testify. I don't want to put the Court through having to have an argument about that. The schedule we were on was, if he's going to be coming, we would have an argument before Your Honor, have the next day to take a deposition if you allowed it, and then he would testify the following day. If we're going to be on that schedule, it's fine to put him off.

THE COURT: We still have this to go through. Let me just tell them.

(The sidebar conference was concluded, and the following proceedings were held in open court:)

THE COURT: All right, folks. We've been talking about the schedule. We've got some work to do. It's getting piled higher and higher every day. We'll give you the morning off. Come back here at 1:00

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tomorrow. 1:00. Have lunch before you get here. All right.

(The jurors exited the courtroom.)

(The following proceedings were had at sidebar:)

THE COURT: Assuming that we're going to go into these depositions tomorrow, I mean, if the defense is right and most of this testimony won't come in on the basis of repetition, on the basis of it's cumulative and on the basis of it's immaterial and irrelevant, all that other stuff --

MR. ROSENBLATT: How could they be right?

THE COURT: Well, according to what I see there, they've got about nine people who have already testified about the same subject matter. We go on with that. Be prepared to address that issue on some of these people.

And if we get into that, let's assume that we do read a deposition, okay, that's going to take most of the afternoon anyway, to do the deposition and the material that's in it. So I'm wondering where we're going.

MR. ROSENBLATT: Well, there are a few loose ends in terms of live witnesses. You'll remember I had made an argument weeks ago about Dr. Adam Wanner, which

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I decided I was not calling him and I was not -- he's up at University of Miami, a pulmonologist. And then they were going to read excerpts, and then I took the position, well, if you're going to allow them to read, I want to call him. That's not an issue. We're not in any great hurry on that.

But with respect to live witnesses, other than Merrill Williams, the possibility of Dr. Wanner, who is in a weird category because of that, you know, I'll talk to Susan. But I mean, we're talking about you can count on the fingers of one hand or less.

THE COURT: It's your intent to bring Williams in?

MR. ROSENBLATT: If he'll come. I'll be a thousand percent -- you know, even if you allow him, I think I have to see him. I've never met him. I've talked to him on the phone.

THE COURT: You've never talked to him?

MR. ROSENBLATT: On the phone. I've talked to him on the phone. He's got a lot of baggage, and I have to size him up. But yeah, as of now, my intention is to use him.

THE COURT: We better discuss Williams anyway since he intends to bring him in.

MR. MOSS: We're prepared to. We're just

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seeing --

THE COURT: You know, there's a lot of problems.

MR. MOSS: We're prepared too --

MR. ROSENBLATT: I assume Susan has worked or will work tomorrow morning on other stuff. Because most of what we have in terms of before I rest will regard depositions and documents.

THE COURT: I've read through these depositions, and an awful lot of it seems repetitious about material that's already been testified to by other people. The deposition itself looks great because it covers a lot of territory, but I keep reading it, I've heard this before, I've heard this before.

MR. ROSENBLATT: But we have two to a specialty. Cahan is the only cancer surgeon, the only cancer surgeon.

THE COURT: We'll discuss that tomorrow. Because I want to --

MR. ROSENBLATT: Brookes is a CEO, sure. No question that it sounds familiar.

THE COURT: Okay. Gentlemen, enjoy your evening.

MS. LUTHER: What time tomorrow, Judge?

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THE COURT: And lady.
MR. ROSENBLATT: What time?
THE COURT: We'll come in the usual time. Make it what, 9:00? Let's start at 9:00 tomorrow.
MR. ROSENBLATT: I wanted to read in those exhibit numbers.
THE COURT: Oh, yeah. Olga wanted to know what to do about those. Get together with her. Give her the numbers. You can do that tomorrow morning or --
MS. BERGER: You mean the ones to go over Friday?
MR. SCHNEIDER: You mean that's a subset for Friday?
MS. BERGER: These are the ones we gave you today.
(Court was adjourned at 5:40 p.m.)

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